



FOUNTAIN COUNTY, INDIANA

ORDINANCE 2019-3

**An Ordinance of the Fountain County Board of Commissioners Establishing
The Unsafe Building Code and Unsafe Building Fund**

WHEREAS, Chapter -- of the Fountain County Code regulates the repair and remediation of unsafe buildings and unsafe premises in the County;

AND WHEREAS, Chapter -- of the Fountain County Code adopts and incorporates the State unsafe building law, Indiana Code 36-7-9. to accurately incorporate the state law, including amendments made to the state law, and to identify the appropriate procedures relating to the identification and remediation of unsafe buildings and unsafe premises.

IT IS THEREFORE ORDAINED that Fountain County adopts and creates the Unsafe Building Code and Unsafe Building Fund:

CHAPTER : UNSAFE BUILDING ORDINANCE

Section 1. UNSAFE BUILDING LAW INCORPORATED BY REFERENCE.

Indiana's Unsafe Building Law, I.C. 36-7-9-1 through 29, is incorporated by reference as the County's Unsafe Building Ordinance. All proceedings for the inspection, repair, and removal of unsafe buildings shall be governed by the state law and this chapter. If any of this chapter's provisions conflict with the state Unsafe Building Law, the state law controls.

Section 2. ADMINISTRATOR AND HEARING AUTHORITY.

The Fountain County Building Department is designated as the department responsible for administering this chapter. The County Building Administrator is designated as the "enforcement authority" as provided in I.C. 36-7-9-2. The Fountain County Board of Commissioners is designated as the "hearing authority" for purposes of conducting hearings under I.C. 36-7-9-7 and for taking any other action authorized by the Unsafe Building Law.

Section 3. "UNSAFE BUILDING" AND "UNSAFE PREMISES" DEFINED.

For purposes of this Chapter, the term "unsafe building" shall have the definition in I.C. 36-7-9-4. In particular, the term means a building or structure, or any part of a building or structure, that is:

- (1) in an impaired structural condition that makes it unsafe to a person or property;
- (2) a fire hazard;
- (3) a hazard to public health;
- (4) a public nuisance;
- (5) dangerous to a person or property because of a violation of a statute or ordinance concerning building conditions or maintenance; or
- (6) vacant and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance.

As further provided in I.C. 36-7-9-4, an unsafe building and the tract of real property on which the unsafe building is located are considered unsafe premises. A tract of real property that does not contain a building or structure, not including land used for producing agriculture, is considered unsafe premises if the tract of real property is:

- (1) a fire hazard;
- (2) a hazard to public health;
- (3) a public nuisance; or
- (4) dangerous to person or property because of a violation of a statute or an ordinance.

Section 4. "SUBSTANTIAL PROPERTY INTEREST" DEFINED.

The definition of "substantial property interest" in I.C. 36-7-9-2 is incorporated herein. In particular, the term means any right in real property that may be affected in a substantial way by actions authorized by this chapter, a fee interest, a life estate interest, a future interest, a mortgage interest, or an equitable interest of a contract purchaser.

Section 5. ORDER, NOTICE, HEARING PROCEDURES, AND CORRECTIVE ACTION.

The procedures in I.C. 36-7-9-5 through 29, and any other applicable provisions of I.C. 36-7-9, are incorporated herein by reference and govern the procedures for enforcing this chapter. The following provisions are intended to provide a summary of the statutory procedures and in no way restrict those procedures or the available relief and remedies.

(A) Issuance of Order.

Upon discovery of an unsafe premises, the Building Administrator may issue an order requiring corrective or remedial action as provided in I.C. 37-7-9-5(a). The order must contain the information specified in I.C. 37-7-9-5(b). The ordered action must be reasonably related to the condition of the unsafe premises and the nature and use of nearby properties. The order supersedes any permit relating to building or land use, whether that permit is obtained before or after the order is issued. The order must allow a sufficient time, of at least 10 days but not more than 60 days, from the time when notice of the order is given, to accomplish the required action. If the order allows more than 30 days for accomplishing the action, the order may require that a substantial beginning be made in accomplishing the action within 30 days.

Notice of the order must be given as provided in I.C. 36-7-9-2 and 36-7-9-25.

The Building Administrator may issue an order that modifies an order previously issued, and may rescind an order previously issued even if the order has been affirmed by the Board of Commissioners.

(B) Hearing and Action by Commissioners.

1. Except as provided below, a hearing by the Commissioners must be held for each order of the Building Administrator issued under this Article. The hearing must be held no earlier than 10 days after notice of the order is given, unless a continuance is properly requested and granted. Persons with an interest in the proceedings who appear at the hearing are entitled to present evidence, cross-examine opposing witnesses, and present arguments.

At the conclusion of the hearing, the Commissioners may make findings and affirm, rescind, or modify the order. But, unless the person to whom the order was issued, or counsel for that person, is present at the hearing, the Commissioners may modify the order only in a manner that makes its terms less stringent. The Commissioners may also grant additional time to accomplish action required by the order, as provided in I.C. 36-7-9-7(f). If the Commissioners affirm or modify an order, they shall issue a continuous enforcement order, as provided in I.C. 36-7-9-7(g).

If the Commissioners affirm an order and finds that there has been a willful failure to comply with the order, the Commissioners may impose a civil penalty in an amount not to exceed \$5,000. The Commissioners may, in its discretion, reduce or strike a penalty. The Commissioners may impose additional penalties, not to exceed \$5,000 per penalty, if the Commissioners find that 1) significant work on the premises to comply with the affirmed order has not been accomplished, and 2) the premises have a negative effect on property values or the quality of life of the surrounding area or the premises require the provision of services by local government in excess of the services required by ordinary properties, as provided in I.C. 36-7-9-7(e).

The record of the findings made and action taken at the Commissioners' hearing shall be available to the public upon request, but neither the Building Administrator nor the Commissioners is required to give any person notice of the findings and action.

2. The Commissioners are not required to hold a hearing relating to a Building Administrator order to seal an unsafe building (I.C. 36-7-9-5(a)(2)), for extermination of vermin (I.C. 36-7-9-5(a)(2)), for removal of trash, debris, fire hazardous material, or a public health hazard (I.C. 36-7-9-5(a)(4)), or to repair or rehabilitate an unsafe building (I.C. 36-7-9-5(a)(5)). However, a person holding a fee interest, life estate interest, mortgage interest, or equitable interest of a contract purchaser in the unsafe premises may request a hearing by the Commissioners relating to such an order. Such a request must be made within 10 days after notice is given. If a hearing is timely requested, the Commissioners shall conduct a hearing. If no hearing is requested, such orders become final 10 days after notice is given.

(C) Judicial Review.

The Commissioners' decision concerning an order or its imposition of a civil penalty is subject to judicial review by the circuit court of Fountain County, as provided in I.C. 36-7-9-8. The petition for judicial review must be filed with the court within 10 days after the date when the action was taken.

(D) Emergency Action Without Order or Notice.

If the Building Administrator finds it necessary to take emergency action concerning an unsafe building or unsafe premises in order to protect life, safety, or property, he may take necessary action to remove an immediate danger without issuing an order or giving notice, as provided in I.C. 36-7-9-9.

(E) Proceedings for Corrective Action, Recovery of Costs, and Related Matters.

All proceedings concerning the enforcement of orders issued under this chapter, including hiring contractors to perform the work necessary to bring a property into compliance, liability for costs of work performed, the County's recovery of costs related to the

enforcement action, and related matters shall be governed by the terms of the Unsafe Building Law, including but not limited to the procedures provided in I.C. 36-7-9-10 through 13.5.

(F) Required Notices.

All notices issued in enforcement proceedings under this Article shall be given as provided in I.C. 36-7-9-25. This includes notice of orders, notice of continued hearings without a specified date, notice of a statement that public bids are to be let, and notice of claims for payment.

(G) Recording of Orders.

The Building Administrator shall record in the office of the Fountain County Recorder orders for demolition and removal of part of an unsafe building (I.C. 36-7-9-5(a)(6)), for demolition and removal of an unsafe building for the reasons specified in I.C. 36-7-9-5(a)(7), or modifying a previously issued order (I.C. 36-7-9-6(a)), and other related orders as provided in I.C. 36-7-9-26.

§Section 6. ESTABLISHMENT OF UNSAFE BUILDING FUND

(A) Pursuant to I.C. 36-7-4-14, there is hereby created a new fund, the Unsafe Building Fund.

(B) Money for the fund may be received from any source, including appropriations by local, state, or federal governments, and donations. The following money shall be deposited in the fund:

1. Money received as payment for or settlement of obligations or judgments established under sections 9 through 13 and 17 through 22****;
2. Money received from bonds posed under I.C. 36-7-4-7;
3. Money received in satisfaction of receivers' notes or certificates that were issued under I.C. 36-7-4-20 and were purchased with money from the unsafe building fund;
4. Money received for payment of settlement of civil penalties or fines imposed under I.C. 36-7-4-7; and
5. Money received from the collection of special assessments under I.C. 36-7-4-13.5.

(C) Money in the fund may be used for the expenses incurred in carrying out the purpose of the Unsafe Building Law and this chapter, including:

1. The cost of obtaining reliable information about the identity and location of each person who owns a substantial property interest in unsafe premises;
2. The cost of an examination of an unsafe building by a registered architect or registered engineer not employed by Fountain County;
3. The cost of surveys necessary to determine the location and dimensions of real property on which an unsafe building is located;

4. The cost of giving notice of orders, notice of statements of rescission, notice of continued hearing, and notice of statements that public bids are to be let as provided in I.C. 36-7-4-25;
5. The bid price of work by a contractor under I.C. 36-7-4-10 or I.C. 36-7-4-17 through 22;
6. The cost of emergency action under I.C. 36-7-4-9; and
7. The cost of notes or receivers' certificates issued under I.C. 36-7-4-20.

Section 7. PUBLIC NUISANCE.

All buildings or portions thereof within the County which are determined after inspection by the Building Administrator or his designee to be unsafe as defined in this article are declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or other appropriate remedial action in accordance with the procedures set forth herein or as otherwise provided by law or the Fountain County Code."

Section 8. FILING REPAIR ORDERS FOR REAL PROPERTY LISTED ON COUNTY EXECUTIVE'S LIST OF VACANT OR ABANDONED PROPERTY.

If real property is listed in the County Executive's certified list of vacant and abandoned property, the County Building Commissioner may submit copies of one or more orders for necessary repairs on vacant or abandoned property, located in the County, to the County Auditor. The County Building Commissioner shall make copies of the submitted orders available for public inspection in the office of the Building Commissioner at least 40 days before a tax sale is conducted by the County pursuant to I.C. 6-1.1-24. If necessary, repair orders are submitted to the County Auditor and made available to the public, a successful bidder for the vacant or abandoned property at a tax sale conducted under I.C. 6-1.1-24, takes the property subject to the necessary repair orders for the vacant property. If a tax deed for a vacant or abandoned property has been issued for a successful bidder subject to a necessary repair order, the County may enforce the order against the successful bidder under I.C. 36-7-9.

Section.99. PENALTIES.

A person who remains in, uses, or enters a building that has been determined to be in violation of an order; knowingly interferes with or delays the carrying out of an order made under this chapter; knowingly obstructs, damages, or interferes with persons engaged or property used in performing any work or duty under this Chapter; or fails to comply with I.C. 36-7-9-27, commits a Class C infraction, each day that the violation continues constitutes a separate offense under I.C. 36-7-9-28.

IT IS FURTHER ORDAINED that this ordinance shall be effective upon adoption.

Adopted this 15th day of July 2019.


A MAJORITY OF THE
FOUNTAIN COUNTY BOARD OF COMMISSIONERS



Craig Stalter, President



Don Hesler, Vice President



Tim Shumaker, Secretary

Attest:



Brenda Hardy, Auditor

J. Kent Minnette, Indiana Attorney No. 21362-45, Taylor, Chadd, Minnette, Schneider & Clutter, P.C., 105 North Washington Street, Crawfordsville, Indiana 47933, (765) 364-1040, prepared this instrument.

I, J. Kent Minnette, affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.



J. Kent Minnette