

STATE OF INDIANA
BEFORE THE TOWN COUNCIL OF SELLERSBURG, INDIANA

ORDINANCE NO. 2020 – OR – 016

AN ORDINANCE REPEALING AND REPLACING CHAPTER 156 (UNSAFE BUILDING CODE) OF THE CODIFICATION OF ORDINANCES FOR THE TOWN OF SELLERSBURG, INDIANA.

WHEREAS, pursuant to Ind. Code § 36-5-2 *et seq.*, this Town Council of Sellersburg, Indiana (this “Council”) is the town legislative body and the President of the town council is the town executive; and,

WHEREAS, pursuant to Ind. Code § 36-5-2-9, the legislative body may adopt ordinances and resolutions for the performance of functions of the town; and,

WHEREAS, on the 14th day of October, 2002, this Council adopted Ordinance 2002-013 which created Chapter 156 – Unsafe Building Code for the Town of Sellersburg, Indiana; and,

WHEREAS, from time to time this Council desires to amend its codification of ordinances to better serve the community.

NOW THEREFORE BE IT ORDAINED by this Town Council of Sellersburg, Indiana that Chapter 156 – Unsafe Building Code is repealed in its entirety and replaced as follows:

§ 156.01 Adoption By Reference; Scope. Pursuant to Ind. Code § 36-7-9-3, this Council hereby adopts the Indiana Unsafe Building Law (i.e. Ind. Code § 36-7-9 *et seq.*) and appoints the Building Commissioner or his designee as the Executive Department and Authority responsible for the administration of the Unsafe Building Law within the Town. The term “chapter” shall also refer to Ind. Code § 36-7-9 *et seq.*

§ 156.02 Definitions.

“Community Organization” means a citizen's group, neighborhood association, neighborhood development corporation, or similar organization that:

- (1) has specific geographic boundaries defined in its bylaws or articles of incorporation and contains at least forty (40) households within those boundaries;
- (2) is a nonprofit corporation that is representative of at least twenty-five (25) households or twenty percent (20%) of the households in the community, whichever is less;

- (3) is operated primarily for the promotion of social welfare and general neighborhood improvement and enhancement;
- (4) has been incorporated for at least two (2) years; and
- (5) is exempt from taxation under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code.

“Continuous Enforcement Order” means an order that:

- (1) is issued for compliance or abatement and that remains in full force and effect on a property without further requirements to seek additional:
 - (A) compliance and abatement authority; or
 - (B) orders for the same or similar violations;
- (2) authorizes specific ongoing compliance and enforcement activities if a property requires reinspection or additional periodic abatement;
- (3) can be enforced, including assessment of fees and costs, without the need for additional notice or hearing; and
- (4) authorizes the enforcement authority to assess and collect ongoing costs for continuous enforcement order activities from any party that is subject to the enforcement authority's order.

“Department” refers to the executive department authorized by ordinance to administer this chapter.

“Enforcement Authority” refers to the chief administrative officer of the department, except in a consolidated city.

“Hearing Authority” refers to a person or persons designated as such by the executive of a city or county, or by the legislative body of a town. An employee of the enforcement authority may not be designated as the hearing authority.

“Known or recorded fee interest, life estate interest, or equitable interest of a contract purchaser” means any fee interest, life estate interest, or equitable interest of a contract purchaser held by a person whose identity and address may be determined from:

- (1) an instrument recorded in the recorder's office of the county where the unsafe premises is located;
- (2) written information or actual knowledge received by the department (or, in the case of a consolidated city, the enforcement authority); or
- (3) a review of department (or, in the case of a consolidated city, the enforcement authority) records that is sufficient to identify information that is reasonably ascertainable.

“Known or recorded substantial property interest” means any right in real property, including a fee interest, a life estate interest, a future interest, a mortgage interest, a lien as evidenced by a certificate of sale issued under IC 6-1.1-24, or an equitable interest of a contract purchaser, that:

- (1) may be affected in a substantial way by actions authorized by this chapter; and
- (2) is held by a person whose identity and address may be determined from:
 - (A) an instrument recorded in:
 - (i) the recorder's office of the county where the unsafe premises is located; or

(ii) the office of the county auditor of the county where the unsafe premises are located in the case of a lien evidenced by a certificate of sale issued under IC 6-1.1-24;

(B) written information or actual knowledge received by the department (or, in the case of a consolidated city, the enforcement authority); or

(C) a review of department (or, in the case of a consolidated city, the enforcement authority) records that is sufficient to identify information that is reasonably ascertainable.

“Substantial property interest” means any right in real property that may be affected in a substantial way by actions authorized by this chapter, including a fee interest, a life estate interest, a future interest, a mortgage interest, or an equitable interest of a contract purchaser.

“Unsafe Buildings or Unsafe Premises” means (a) 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 the public health;
- (4) a public nuisance;
- (5) dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance; or
- (6) vacant or blighted and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance;

is considered an unsafe building.

(b) For purposes of this chapter, the following are considered unsafe premises:

- (1) An unsafe building and the tract of real property on which the unsafe building is located.
- (2) A tract of real property, not including land used for production agriculture, that does not contain a building or structure or contains a building or structure that is not considered an unsafe building, if the tract of real property is:

- (A) a fire hazard;
- (B) a hazard to public health;
- (C) a public nuisance; or
- (D) dangerous to a person or property because of a violation of a statute or an ordinance.

§ 156.03 Order; Contents; Notice; Expiration. (a) The enforcement authority may issue an order requiring action relative to any unsafe premises, including:

- (1) vacating of an unsafe building;
- (2) sealing an unsafe building against intrusion by unauthorized persons, in accordance with a uniform standard established by ordinance;
- (3) extermination of vermin in and about the unsafe premises;
- (4) removal of trash, debris, fire hazardous material, or a public health hazard in and about the unsafe premises;
- (5) repair or rehabilitation of an unsafe building to bring it into compliance with standards for building condition or maintenance required for human habitation, occupancy, or use by a statute, a rule adopted under IC 4-22-2, or an ordinance;

- (6) demolition and removal of part of an unsafe building;
- (7) demolition and removal of an unsafe building if:
 - (A) the general condition of the building warrants removal; or
 - (B) the building continues to require reinspection and additional abatement action after an initial abatement action was taken pursuant to notice and an order; and
- (8) requiring, for an unsafe building that will be sealed for a period of more than ninety (90) days:
 - (A) sealing against intrusion by unauthorized persons and the effects of weather;
 - (B) exterior improvements to make the building compatible in appearance with other buildings in the area; and
 - (C) continuing maintenance and upkeep of the building and premises;

in accordance with standards established by ordinance.

Notice of the order must be given under section 25 of this chapter. 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.

(b) The order must contain the following:

- (1) The name of the person to whom the order is issued.
- (2) The legal description or address of the unsafe premises that are the subject of the order.
- (3) The action that the order requires.
- (4) The period of time in which the action is required to be accomplished, measured from the time when the notice of the order is given.
- (5) If a hearing is required, a statement indicating the exact time and place of the hearing, and stating that person to whom the order was issued is entitled to appear at the hearing with or without legal counsel, present evidence, cross-examine opposing witnesses, and present arguments.
- (6) If a hearing is not required, a statement that an order under subsection (a)(2), (a)(3), (a)(4), or (a)(5) becomes final ten (10) days after notice is given, unless a hearing is requested in writing by a person holding a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises, and the request is delivered to the enforcement authority before the end of the ten (10) day period.
- (7) A statement briefly indicating what action can be taken by the enforcement authority if the order is not complied with.
- (8) A statement indicating the obligation created by section 27 of this chapter relating to notification of subsequent interest holders and the enforcement authority.
- (9) The name, address, and telephone number of the enforcement authority.
- (10) A statement that the hearing authority may determine the property to be abandoned as provided in IC 36-7-37.

(c) The order must allow a sufficient time, of at least ten (10) days, but not more than sixty (60) days, from the time when notice of the order is given, to accomplish the required action. If the order allows more than thirty (30) days to accomplish the action, the order may require that a substantial beginning be made in accomplishing the action within thirty (30) days.

(d) The order expires two (2) years from the day the notice of the order is given, unless one (1) or more of the following events occurs within that two (2) year period:

- (1) A complaint requesting judicial review is filed under section 8 of this chapter.
- (2) A contract for action required by the order is let at public bid under section 11 of this chapter.
- (3) A civil action is filed under section 17 of this chapter.

(e) If the order contains a statement under subsection (a)(6) or (a)(7), notice of the order shall be given to each person with a known or recorded substantial property interest.

§ 156.04 Hearing Authority – (3) Member Board. Pursuant to the Unsafe Building Law, this Council hereby establishes a three (3) member Hearing Authority to act on any and all matters that may come before it as prescribed by local ordinance or Indiana law. The three (3) member board shall be made up of the following members:

1. Town Manager
2. Town Council Member (Appointed by the Town Council)
3. A Resident of the Town of Sellersburg (Appointed by the Town Council)

The Hearing Authority shall meet on at least a monthly basis and shall be responsible for following all local ordinances and Indiana laws when performing its duties, including but not limited to, Indiana open door laws. Should a conflict ever exist between a local ordinance and Indiana law, Indiana law shall prevail.

The Resident shall be compensated per meeting at the same rate as other town boards.

§ 156.05 Failure Or Refusal To Comply With Order; Civil Penalty. This section applies to an order issued under Ind. Code § 36-7-9-5(a)(5) of this chapter for which a hearing was not requested as provided in section 7 of this chapter.

(a) If the person to whom the order was issued fails or refuses to comply with the order within sixty (60) days or the time specified in the order, the enforcement authority may impose a civil penalty not to exceed two thousand five hundred dollars (\$2,500). The enforcement authority shall give notice of the civil penalty to all persons with a known or recorded substantial property interest in the unsafe premises.

(b) After a civil penalty is imposed under subsection (a), the enforcement authority may impose an additional civil penalty in an amount not to exceed one thousand dollars (\$1,000) every ninety (90) days if the person to whom the order was issued continues to fail or refuse to comply with the order.

(c) If a civil penalty under this section is unpaid for more than fifteen (15) days after payment of the civil penalty is due, the civil penalty may be collected in the same manner as costs under section 13 or 13.5 of Ind. Code § 36-7-9 *et seq.*

The amount of the civil penalty that is collected shall be deposited in the unsafe building fund.

§ 156.06 Unsafe Building Fund. Pursuant to Ind. Code § 36-7-9-14, the Enforcement Authority shall establish in its operating budget a fund designated as the Unsafe Building Fund. Any balance

remaining at the end of a fiscal year shall be carried over in the fund for the following year and does not revert to the General Fund. In addition, the list of the money to be deposited into the Unsafe Building Fund can be found at Ind. Code § 36-7-9-14(b) and may be used as set forth at Ind. Code § 36-7-9-14(c). All payments of money from the Unsafe Building Fund must be made in accordance with applicable law.

§ 156.07 Violations; Penalties.

(a) A person / entity who:

- (1) remains in, uses, or enters a building in violation of an order made under this chapter;
- (2) knowingly interferes with or delays the carrying out of an order made under this chapter;
- (3) knowingly obstructs, damages, or interferes with persons engaged or property used in performing any work or duty under this chapter; or
- (4) fails to comply with Ind. Code § 36-7-9-27;

commits a Class C infraction and shall be fined \$100 **per** offense and **per** violation.

Each day that a violation continues constitutes a separate offense.

This section does not, in any way, limit the Town of Sellersburg or Enforcement Authority from any and all other remedies it may have against the person or entity who may be in violation of this chapter or Indiana law.

This ordinance shall be in full force and effect thirty (30) days upon its passage and promulgation as evidenced by the affirmative signatures of the undersigned as the majority of the duly elected and serving members of this Council.

The Executive Secretary is hereby tasked with publishing a copy of said Ordinance in a newspaper, as defined by Ind. Code § 5-3-1-0.4, within thirty (30) days of its passage.

So Ordained this ____ day of _____, 2020

[Signature page to follow]

“Aye”

“Nay”

Brad Amos
Brad Amos
Council President

Brad Amos
Council President

Matthew Czarnecki
Matthew Czarnecki
Council Vice President

Matthew Czarnecki
Council Vice President

Terry Langford
Terry Langford
Council Member

Terry Langford
Council Member

Scott McVoy
Scott McVoy
Council Member

Scott McVoy
Council Member

Randall Mobley
Randall Mobley
Council Member

Randall Mobley
Council Member

Michelle D. Miller
Attested by: Michelle Miller
Sellersburg Clerk-Treasurer

FIRST READING

DATE: 7/27/2020

MOTION: Langford

SECOND: Mobley

VOTE: 5 AYE 0 NAY 0 ABSTAIN

SECOND READING

DATE: 7/27/2020

MOTION: Langford

SECOND: Mobley

VOTE: 5 AYE 0 NAY 0 ABSTAIN

