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JANET HOWARD

MARSHALL COUNTY RECORDER

08/03/2020 11:17 AM

REC FEE: 0.00 PGS: 10

# MARSHALL COUNTY, INDIANA

## Ordinance 2020-12

AN ORDINANCE providing for the inspection, repair, or removal of unsafe building and unsafe premises with the County of Marshall, State of Indiana.

WHEREAS, The Marshall County Unsafe Building Board presents Ordinance 2015-12 for repeal and replace.

WHEREAS, The Board of County Commissioners of Marshall County, Indiana, did give legal notice and conduct a public meeting on June 15, 2020 in regard to said Unsafe Building and Property Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Marshall County, State of Indiana as follows:

### **Section 1 - Title**

- A. In accordance with Indiana Code (IC) 36-7-9, et seq., this chapter is established and shall be known as the “Unsafe Building and Property Ordinance of Marshall County, Indiana.”

### **Section 2 - Scope**

- A. Adoption by reference

Indiana Code 36-7-9 through IC 36-7-9-28 (collectively “State Code”) is hereby adopted by reference as the Marshall County Unsafe Building and Property Ordinance. All proceedings within the County of Marshall for the inspection, repair, and removal of unsafe buildings shall be governed by said Law and the provisions of this Ordinance. In the event the provisions of this ordinance conflicts with the provisions of Indiana Code 36-7-9 through 36-7-9-28, the provisions of the State statute shall control.

- B. Purpose

It is the intent of Marshall County to pursue code compliance actively and vigorously to protect the health, safety, and environment of the general public.

- C. Identify

All buildings and properties or portions thereof within Marshall County which are determined after inspection by the Marshall County Building Commissioner (Building Inspector) or his duly designated representative, such as a representative from the Marshall County Health Department or the code enforcement officer from the Plan

Commission to be unsafe as defined in this ordinance are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal.

1. Right of entry – The Building Commissioner or representative from the Marshall County Health Department is authorized to enter any subject premises at reasonable times to inspect the same, subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, The Building Commissioner or representative is authorized to pursue recourse as provided by law.

### **Section 3 – Administration**

A. The Marshall County Building Commissioner (Building Inspector) shall be authorized to administer and to proceed under the provisions of said law in ordering the repair or removal of any buildings or materials found to be unsafe as specified therein or as specified hereafter.

1. Deputies – In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the Building Commissioner shall have the authority to appoint a deputy Code Officer, other related technical officer, inspectors and other employees.
2. Liability – The Building Commissioner charged with the enforcement of this Ordinance, while acting for the jurisdiction, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act required or permitted in the discharge of official duties.

Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this Ordinance shall be defended by the legal representative of Marshall County until the final termination of the proceedings. The Building Commissioner or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the inspections, acting in good faith and without malice, shall be free from liability for acts performed under any of this Ordinance provisions or by reason of any act or omission in the performance of official duties in connection therewith.

3. Authority - Wherever in the building regulations of Marshall County or the Marshall County Unsafe Building and Property Ordinance it is provided that anything must be done to the approval of or subject to the direction of the Building Commissioner (Building Inspector), or any other officer of the county, this shall be construed to give such officer only the discretion to determine whether the rules and standards established by ordinance have been complied with; and no such provisions shall be

construed as giving any office discretionary powers as to what such regulations or standards shall be, power to require conditions not prescribed by ordinance, or to enforce ordinance provision in an arbitrary or discretionary manner. This board has the authority to establish policy and standard operating procedures.

4. Identification – The Building Commissioner or representative shall carry proper identification when inspecting structures or premises in the performance of duties under this Ordinance.

## **Section 4 – Unsafe Building Board**

### **A. Membership**

The Marshall County Unsafe Hearing Board – This Board is hereby designated the hearing authority for the continuation of this ordinance as outlined in Indiana code 36-7-9 through IC 36-7-9-28. The Unsafe Building Board will be the governing party to make decisions on cases for Marshall County.

Membership of the Unsafe Building Board will consist of nine (9) members. Each member must (a) Be a resident of the jurisdictional area of the board. (b) Be a resident of the county and also be an owner of real property located in whole or in part in the jurisdictional area of the board.

1. Each municipality in Marshall County will appoint a member to the Unsafe Board. The towns include: Argos, Bourbon, Bremen, Culver, Plymouth and LaPaz.
2. County Commissioners will appoint one (1) member to represent them on the board.
3. County Council will appoint one (1) member to the board.
4. Social Services Advocate one(1) will be appointed to the board by the Marshall County Commissioners.

### **A. Organization; Quorum – IC 36-7-4-301**

A quorum consists of a majority of the entire membership of the Unsafe Board, who are qualified to vote.

### **B. Organization; President and Vice-President - IC 36-7-4-303**

At the first regular meeting in each year, the Unsafe Board shall elect from its members a president and a vice president. The vice president may act as president of the Unsafe Board during the absence or disability of the president.

C. Organization; Secretary – IC 36-7-4-304

The Unsafe Board may appoint and fix the duties of a secretary, who is not required to be a member of the board.

D. Organization; Regular Meeting and Minutes – IC 36-7-4-306

The Unsafe Board shall fix the time for holding regular meetings each month or as necessary. The Board shall keep minutes of its meetings. The minutes of the board meetings and all records shall be filed in the office of the building commissioner and are public records.

F. Marshall County Staff

The Marshall county Building Commissioner, Plan director, and a representative from Marshall County Health Department will be the Marshall County staff to serve the Unsafe Building Board.

- a. Staff will inspect all complaints or notifications of unsafe building or structure
- b. Collect all information and pictures regarding the case
- c. Notify the proper parties of the violations and guidelines that need to be done to correct the issue(2)
- d. Present the cases to the Unsafe Building Board at the monthly meeting with recommendations if parties involved do not comply
- e. Follow up on the case(s)
- f. Representative to go to court if necessary
- g. Plan Director will be an advisor on an as needed basis

## **Section 5 – Unsafe Building and Premises Description**

The description of an unsafe building and unsafe premises described in Indiana Code 36-7-9-4 is hereby supplemented to provide minimum standards for building condition, property conditions or maintenance in Marshall County, Indiana, by adding the following definition.

**UNSAFE BUILDING:** Any building or structure which has any or all of the condition or defects hereinafter described shall be deemed to be unsafe building, provided that such conditions or defects exist to the extent that life, health, property, or safety of the public or its occupants are endangered.

- a. Whenever any door, aisle, passageway, or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
- b. Whenever the stress in any materials, member, or portion thereof, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed for new buildings of similar structure, purpose or location.
- c. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is

- materially less than it was before such catastrophe and is less than the minimum requirements for new buildings or similar structure, purpose or location.
- d. Whenever any portion, member, or appurtenance thereof is likely to fall, to become detached, or dislodged, or to collapse and thereby injure persons or damage property.
  - e. Whenever any portion of a building, or any member, appurtenance, ornamentation on the exterior thereof is not sufficient strength or stability or is not so anchored, attached, or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified for new buildings or similar structure, purpose or location without exceeding the working stresses permitted for such buildings.
  - f. Whenever any portion thereof has racked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
  - g. Whenever the building or structure, or any portion thereof, because of (1) dilapidation, deterioration, or decay; (2) faulty construction; (3) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (4) the deterioration, decay or inadequacy of its foundation; or (5) any other cause, is likely to partially or completely collapse.
  - h. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
  - i. Whenever the exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.
  - j. Whenever the building or structure, exclusive of the foundation, shows thirty-three percent (33%) or more damage or deterioration of its supporting member or members, or fifty percent (50%) damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.
  - k. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood or has become so dilapidated or deteriorated so as to become (1) an attractive nuisance to children, or (2) freely accessible to persons for the purpose of committing unlawful acts.
  - l. Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirements or prohibition applicable to such building structure provided by the building regulations of the County, or of any law or ordinance of this State or County, relating to the condition, location, or structure of buildings.
  - m. Whenever any building or structure which, whether or not erected in accordance with all applicable laws or ordinances has in any non-supporting parts, member, or portion less than fifty percent (50%), or is any support part, member or portion less than sixty-six percent (66%) of the (1) strength, (2) fire-resisting qualities or characteristics, or (3) weather – resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height, and occupancy in the same location.
  - n. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction, or

arrangements, inadequate light, air, or sanitation facilities, or otherwise, is determined by the Building Commissioner (Building Inspector) to be unsanitary, unfit for human habitation, or in such a condition that is likely to cause sickness or disease.

- o. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections, or heating apparatus, or other cause, is determined by the Building Commissioner (Building Inspector) to be a fire hazard.
- p. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building structure or whenever any building or structure is abandoned for a period in excess of six (6) months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

### **Section 6 – Substantial Property Interest**

The definition of “substantial property interest” set forth in IC 36-7-9-2 is hereby incorporated by reference herein as if copied in full.

### **Section 7 – Reconstruction, alterations, repair or demolition**

All work for the reconstruction, alteration, repair or demolition of building and other structures shall be performed in a good workmanlike manner according to the accepted standards and practices in the trade. The provisions of the rules pertaining to construction, plumbing, electrical, mechanical and one and two family dwellings promulgated by the Fire Prevention and Building Safety Commission of Indiana shall be considered standard and acceptable practice for all matters covered by this ordinance or orders issued pursuant to this ordinance by the Building Commissioner of Marshall County, Indiana.

### **Section 8 – Funds**

An Unsafe Building and Unsafe Premises Fund is hereby designated and established in the operating budget of the Building Department in accordance with the provision of IC 36-7-9-14.

### **Section 9 – Violation**

No person, Firm or corporation, whether as owner, lessee, sub lessee or occupant shall erect, construct, enlarge, alter, repair, move, improve, remove, demolish, equip, use, occupy or maintain any building or premises, or cause or permit the same to be done, contrary to or in violation of any of the provisions of this ordinance or any order issued by the Building commissioner. Any person violating the provisions of this ordinance or IC 36-7-9-28 shall commit a Class C infraction for any day violation continues.

#### **A. Emergency Orders**

Emergency action in order to protect life, safety or property may be taken without issuing an order or giving notice but shall be taken in accordance with IC 36-7-9-9. The action is limited to the abatement of any immediate danger. The county may recover the costs of

the action by filing suit in the Marshall County Circuit Court against any persons then holding the fee interest or a life estate in the unsafe premises. Alternatively, the enforcement authority may bring a civil action under IC 36-7-9-17 and IC 36-7-9-22, alleging the existence of unsafe premises which present an immediate danger to the community sufficient to warrant emergency action. In such case, there shall be a hearing within ten days on the complaint.

B. General Procedure

There shall be a minimum of a three-step procedure for the enforcement of violations. Intermediate steps, including additional notices of violation and extensions of time limits for compliance may be used by the Building Commissioner at his/her discretion. However, the general procedure for all violations shall be consistent.

1. Notice of violation – The Building Commissioner or his duly designated representative shall serve a notice of violation to the person(s) who has committed, in whole or in part, a violation. The notice will determine the necessary steps to place the building or premises into compliance. A time frame will be determined.
  - a. Notice can be done in person working with the person(s) responsible for the unsafe building or premises.
  - b. Notice can be sent by certified letter return receipt to the person(s) responsible for the unsafe building or premises of the Unsafe Building Board meeting that will hear the case.
2. Prosecution of violations – If a notice of violation is not obeyed, the Building Commissioner may institute an appropriate proceeding at law or equity to restrain, enjoin, correct or abate such violation, or to require the removal or termination of use of a structure in violation of the provisions of this code, or any order issued pursuant to it; and, in addition may prosecute an action to impose fines for violation.
3. Violation Penalties – If a notice of violation is not corrected within the correction time specified, the Building Commissioner may institute any appropriate proceeding at law to restrain, enjoin, correct or abate such violation. The Notice of Fines for Violation shall be mailed via Certified Mail, Return Receipt Request by the Building Commissioner. The person(s) in violation will have a minimum of fifteen (15) days from the date of the mailing to pay all applicable fines and must correct the violation within the time period specified or face additional fines.
  - a. Monetary fines may be imposed at the discretion of the Unsafe Building Board with the Notice of fines for Violations.
    1. Multiple Violations – Each violation shall constitute a separate offense.

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2. Fine Amount – Each separate offense shall be subject to a fine of up to \$200 per day from date of compliance requested by the Building Commissioner in the Notice of Violation.
3. In addition to any fine imposed, any person who initiates any activity which requires an Improvement Location Permit without first obtaining a permit may be required to pay three (3) times the normal amount of the permit consistent with the adopted fee schedule.
- b. Payment – The payment of any violation shall be by cash or cashier’s check and shall be delivered to the Building Commissioner who shall forward the funds to the County Auditor for deposit in the General Fund. The Building Commissioner will issue a receipt to the person making the payment.
- c. Waiver – The Building Commissioner and/or Unsafe Building Board may at his/her discretion, waive the assessed fine for the otherwise timely correction of the violation.
- d. Liability for attorney fees – In any action brought by the Building Commissioner, Marshall County Health Department, or Unsafe Building Board or legal counsel for the County to enforce the provisions of this code, the County shall be entitled to recover reasonable fees.

#### 4. Fines

Violations shall be punished as follows:

First Offense	\$ 50.00 per day
Second Offense	\$100.00 per day
Third Offense	\$200.00 per day

#### Appeals

Any person receiving a Notice of Violation and/or Fines for Violation may appeal the violation and/or fine to the Unsafe Building Board or to a court of jurisdiction. A written statement from the person in violation, either filing an Administrative Appeal consistent with this Ordinance or giving notice of the filing of an action with a court, shall be submitted to the Building Commissioner via Certified Mail at least three (3) days prior to the date any fine and/or compliance is due.

##### a. Fines

Fines due will be postponed until the Unsafe Building Board or court of jurisdiction has made a ruling as to the violation and/or fine. The person (s) in violation shall have a maximum of six (6) months to complete the hearing process with the Unsafe Building Board. Failure to meet the deadline will reinstate all fines due by the person(s) in violation, including those which would have accumulated during the appeal process.

##### b. Additional Notices



No additional notices will be issued by the Building Commissioner and/or the Unsafe Building Board if the person(s) in violation has (have) submitted an appeal or notice of court review.

5. Enforcement of Ordinance Requirements and Commitments

The Building Commissioner via the Marshall County Attorney may bring an action in the Circuit or Superior Court of Marshall County to evoke any legal, equitable, or special remedy, for the enforcement of any ordinance or regulation created under IC 36-7-9, and its subsequent amendments.

- a. Enforcement – This includes but is not limited to the following:
  1. The Unsafe Ordinance and any other requirements adopted separately by the Board of County Commissioners or adopted by their reference in the Unsafe Building Ordinance.
  2. All agreements with the Building Commissioner, staff or its designees.
  3. All commitments made in accordance with IC 36-7-9 et al; and
  4. All conditions imposed in accordance with IC 36-7-9 et al.
- b. Restraint – The Building Commissioner may bring action in the Circuit or Superior Court of the County to restrain a person violating IC 36-7-9 et al. or any ordinance adopted under IC 36-7-9 et al.
- c. Removal of Structures – The Building Commissioner may also bring an action in the Circuit or Superior Court of the County for a mandatory injunction, directing to remove a structure erected in violation of this Ordinance or applicable state code.

6. Responsibility for costs

If the Building Commissioner is successful in his/her action, the respondent shall bear all cost of his/her action, including the costs of any required remedy, any fines, and the costs of enforcement (including any attorney fees, hours worked, photocopying charges, mileage, and other cost incurred directly or indirectly by the County.)

- a. Documentation – Only those costs of enforcement which are clearly documented by the Building Commissioner, and which clearly bear relationship to the enforcement action shall be paid by the respondent.
- b. Determination – In all instances the dollar amount to be paid by the respondent shall be determined by the court of jurisdiction.

7. Others Parties Eligible to Seek Enforcement

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An action to enforce a written commitment made in accordance with IC 36-7-9 et al. may be brought in the Circuit or Superior Court of the County by:

- a. Rules and Procedures Provisions – Any person who is entitled to enforce a commitment made in accordance with IC 36-7-9 et al. under the Rules and Procedures of the Building Commissioners or the Unsafe Building Board in force at the time of the commitment was made; or
- b. Specified Parties – Any other specially affected person who was designated in the written commitment.

**Section 10 – Validation**

- B. Should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reasons, the remainder of said ordinance shall not be affected thereby.
- C. This ordinance will be in full force and effect on the June 15, 2020, according to the laws of the State of Indiana. All former ordinances which conflict with this ordinance are hereby repealed.

Adopted this 3rd day of August, 2020

THE BOARD OF COMMISSIONERS OF  
MARSHALL COUNTY, INDIANA

Kevin Overmyer

Kevin Overmyer, President

Stan Klotz

Stan Klotz, Vice-President

Mike Burroughs

Mike Burroughs, Member

ATTEST:

Julie A. Fox

Julie Fox, Auditor