

**ORDINANCE NUMBER CO – 2020- 43**  
**(Replacing Ordinance 08-419)**

**AN ORDINANCE RE-ESTABLISHING THE ELKHART COUNTY**  
**UNSAFE BUILDING ORDINANCE**

WHEREAS Indiana Code § 36-1-3-1 et seq. permit any unit in the State of Indiana to exercise any power or to perform any function necessary to the public interest in the context of its governmental or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS the Board of Commissioners of the County of Elkhart, Indiana is the County executive and legislative body and is by law authorized to adopt ordinances and resolutions pursuant to its police power for the public health, safety, and general welfare of its citizens;

WHEREAS the Board of Commissioners of the County of Elkhart, Indiana desires to re-establish, restate, and update the Elkhart County Unsafe Building Ordinance;

NOW, THEREFORE, BE IT ORDERED, ESTABLISHED, AND ORDAINED by the Board of Commissioners of the County of Elkhart, Indiana as follows:

1. **ADOPTION.** The Commissioners re-establish a County Unsafe Building Ordinance in accordance with the Indiana Unsafe Building Law.
  
2. **CONTENTS OF LAW.** The County Unsafe Building Ordinance includes the Indiana Unsafe Building Law which is hereby adopted. For purposes of this Ordinance, the Indiana Unsafe Building Law shall refer to the body of law in Indiana known as the Unsafe Building Law located at I.C. §36-7-9 et seq., as amended, replaced, and interpreted from time to time. This Ordinance governs all proceedings within the County for the inspection, repair, and removal of unsafe buildings and premises. If the provisions of this Ordinance conflict with Indiana statutory law, then the provisions of State law govern.
  
3. **REQUIRED ACTIONS.** If the County Building Commissioner or any so designated employee determines after an inspection that any building or portion of a building within the County is unsafe, as that term is defined in this Ordinance or in the Indiana Unsafe Building Law, that building or portion of building shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures set forth in the County Unsafe Building Ordinance.
  
4. **ADMINISTRATION AND ENFORCEMENT.** The County Building Department shall be the executive department that is authorized to administer the County Unsafe Building Ordinance and the Indiana Unsafe Building Law. The County Building Commissioner shall be

the enforcement authority for purposes of the County Unsafe Building Ordinance and the Indiana Unsafe Building Law.

5. ENFORCEMENT DISCRETION. If the Elkhart County Building Code Ordinance, as amended and replaced from time to time, or the County Unsafe Building Ordinance provides that any act shall be required to receive the approval of, or shall be subject to the discretion of the County Building Department, or any other County officer or department, the provisions shall be construed to give that officer only the discretion of determining if the rules and standards established by this Ordinance have been met. No provision shall be construed to give any County officer discretionary power to determine what the regulations or standards shall be, power to require conditions not prescribed by this Ordinance, or to enforce Ordinance provisions in an arbitrary or discretionary manner.

6. UNSAFE BUILDING DEFINED. The definition of an unsafe building and premises contained in Indiana Code 36-7-9-4, as amended or replaced from time to time, is supplemented to provide minimum standards for building conditions or maintenance in the County by adding the following provisions to that definition:

Any building or structure which has any or all of the conditions or defects described in this subsection shall be deemed an unsafe building and premises, if those conditions or defects exist to the extent that life, health, property, or the safety of the public or the occupants of that building or structure are endangered.

- a. If 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 in compliance with any applicable building code requirement;
- b. If the stress in any materials, member, or portion of them, due to all dead or live loads, is more than one and one-half (1.50) times the working stress or stresses allowed for new buildings of similar structure, purpose, or location;
- c. If any portion has been damaged by fire, earthquake, wind, flood, or by any other cause, to the extent that its structural strength or stability is materially less than it was before that catastrophe and is less than the minimum requirements for new buildings of similar structure, purpose, or location;
- d. If any portion, member, or appurtenance is likely to fail, to become detached or dislodged, or to collapse and thereby injure persons or damage property;
- e. If any portion of a building or any member, appurtenance, or ornamentation on the exterior of it is not of sufficient strength or stability or is not so anchored, attached, or fastened in place to be capable of resisting a wind pressure of one-half (.50) of that specified for new buildings of similar structure, purpose, or location without exceeding the working stresses permitted for those buildings;

- f. If any portion has racked, warped, buckled, or settled to the 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. If the building or structure, or any portion of it, is likely to partially or completely collapse due to:
  - 1. dilapidation, deterioration, or decay;
  - 2. faulty construction;
  - 3. the removal, movement, or instability of any portion of the ground necessary to support that building;
  - 4. the deterioration, decay, or inadequacy of its foundation; or
  - 5. any other cause;
- h. If, for any reason, the building or structure, or any portion of it, is manifestly unsafe for the purpose for which it is being used;
- i. If the exterior walls or other vertical structural members list, lean, or buckle, to the extent that a plumb line passing through the center of gravity does not fall inside the middle one-third (1/3) of the base;
- j. If the building or structure, exclusive of its 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. If the building or structure has been so damaged by fire, wind, earthquake, or flood, or has become so dilapidated or deteriorated as to become:
  - 1. an attractive nuisance to children; or
  - 2. freely accessible to persons for the purpose of committing unlawful acts;
- 1. If any building or structure has been constructed, exists, or is maintained in violation of any requirement or prohibition set forth in the Elkhart County Building Code Ordinance, as amended and replaced from time to time, or of any State law or other County ordinance governing the condition, location, or structure of buildings; provided, however, that legal non-conforming buildings or structures as permitted by and in compliance with 675 IAC 12 shall not be considered an unsafe building or unsafe premises by reason alone of having such legal non-conforming condition;

m. If any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member, or portion, less than fifty percent (50%), or in any supporting 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 and height;

- n. If a building or structure, used or intended to be used for dwelling purposes is found by the County Building Department to be unsanitary, unfit for human habitation, or is likely to cause sickness or disease, due to inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangements, inadequate light, air, or sanitary facilities, or for any other reason;
- o. If any building or structure is determined by the County Building Department to be a fire hazard because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electrical wiring, gas connections or heating apparatus, or for any other reason; or
- p. If any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or any building or structure is abandoned for more than six (6) months so that it constitutes an attractive nuisance or a hazard to the public safety.

7. OTHER DEFINITIONS.

- a. "Building Commissioner" as used in this Ordinance shall mean and refer to the Elkhart County Building Commissioner and his or her duly authorized representatives. Duly authorized representatives shall include all employees holding positions identified within the budget classifications for the Planning Division and the Code Enforcement Division of the annual budget as approved and as amended by the Elkhart County Council from time to time.
- b. "Building Department" as used in this Ordinance shall mean and refer to the Elkhart County Building Department as re-established and confirmed by the Elkhart County Building Code Ordinance.
- c. "Commissioners" as used in this Ordinance shall mean and refer to the county executive of the County of Elkhart, Indiana.
- d. "County" as used in this Ordinance shall mean and refer to Elkhart County, Indiana.

- e. “Substantial property interest” as used in this Ordinance shall mean and refer to the definition of “substantial property interest” as set forth in IC 36-7-9-2, as amended or replaced from time to time, which is hereby incorporated by reference and made a part of this Ordinance.

8. CONSTRUCTION STANDARDS. All work for the reconstruction, alteration, repair, or demolition of buildings or other structures, and the removal of trash and debris from the unsafe premises shall be performed in a good and workmanlike manner according to the accepted standards and practices in the trade and shall be performed in accordance with the standards and requirements of the Elkhart County Building Code Ordinance.

9. HEARING AUTHORITY DUTIES.

- a. The Commissioners hereby designate and name the Hearing Officer as appointed by the Elkhart County Plan Commission from time to time as the person to serve as the Hearing Authority for the purposes of conducting hearings in accordance with IC 36-7-9-7, as amended or replaced from time to time.
- b. The Hearing Authority shall meet once a month as required and shall be comprised of one (1) Hearing Officer.
- c. The Hearing Authority shall create reasonable rules of procedure for holding a hearing as required by the Indiana Unsafe Building Law.
- d. The Hearing Authority may allow additional time for a person to complete an action requested in the order. The Hearing Officer may require a person making a request for additional time to post a performance bond.
- e. In allowing additional time to comply with an order, the Hearing Authority may impose up to the maximum amount performance bonds for the following types of Orders to Comply:

TYPE OF ORDER TO COMPLY: DEMOLITION OR REPAIR OF STRUCTURAL CODE VIOLATIONS FOR AGRICULTURAL OR RESIDENTIAL STRUCTURES TO INCLUDE ACCESSORY STRUCTURES AND BUILDINGS
PERFORMANCE BOND AMOUNT (MAXIMUM)
\$50,000.00

TYPE OF ORDER TO COMPLY: DEMOLITION OR REPAIR OF NON-STRUCTURAL CODE VIOLATIONS FOR AGRICULTURAL OR RESIDENTIAL STRUCTURES TO INCLUDE ACCESSORY STRUCTURES AND BUILDINGS
PERFORMANCE BOND AMOUNT (MAXIMUM)
\$25,000.00

TYPE OF ORDER TO COMPLY: DEMOLITION OR REPAIR OF STRUCTURAL CODE VIOLATIONS FOR COMMERCIAL OR MANUFACTURING STRUCTURES TO INCLUDE ACCESSORY STRUCTURES AND BUILDINGS
PERFORMANCE BOND AMOUNT (MAXIMUM)
\$250,000.00

TYPE OF ORDER TO COMPLY: DEMOLITION OR REPAIR OF NON-STRUCTURAL CODE VIOLATIONS FOR COMMERCIAL OR MANUFACTURING STRUCTURES TO INCLUDE ACCESSORY STRUCTURES AND BUILDINGS
PERFORMANCE BOND AMOUNT (MAXIMUM)
\$125,000.00

- f. The performance bond amounts shall be at the discretion of the Hearing Authority based upon the estimated costs to comply as determined by the Hearing Authority. Performance bonds shall be forfeited if the action required by the order is not completed within the additional time granted to comply.
  - g. Notice must be served in the manner set forth in IC 36-7-9-25, as amended or replaced from time to time. If service is not obtained and the Hearing Authority finds that reasonable effort was made to obtain service, service may be made by publication. If service is made by publication, publication must be made two (2) times, at least one (1) week apart.
  - h. Whenever the Hearing Authority affirms or modifies an order of the County Building Commissioner, the Hearing Authority shall issue a continuous enforcement order (as defined in IC 36-7-9-2), authorizing the County Building Commissioner to conduct ongoing compliance or abatement activities for the same or similar violations, including the assessment of fees and costs, without the need for additional notice or hearing.
10. UNSAFE BUILDING FUND.
- a. The County Unsafe Building Fund is re-established and perpetuated in the County operating budget in accordance with the provisions of IC 36-7-9-14, as amended or replaced from time to time.
  - b. All amounts collected on a forfeited bond will be deposited in the County Unsafe Building Fund.

11. CIVIL PENALTIES.

- a. If a person to whom the County Building Commissioner issued an order requiring the repair or rehabilitation of an unsafe building fails or refuses to comply with such order within sixty (60) days or the time specified in the order, the County Building Commissioner may impose a civil penalty of not more than Two Thousand Five Hundred Dollars (\$2,500). The County Building Commissioner may impose an additional civil penalty of not more than 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.
- b. If the Hearing Authority finds that there has been a willful failure to comply with an order issued by the County Building Commissioner, the Hearing Authority may impose a civil penalty of not more than Five Thousand Dollars (\$5,000). The Hearing Authority may impose additional civil penalties of not more than Five Thousand Dollars (\$5,000) each, if the Hearing Authority finds that: (1) significant work on the premises in compliance with the order has not been accomplished; and (2) the premises have a negative impact on property values or quality of life in the surrounding area or that the premises require the provision of services by local government in excess of the services required by ordinary properties.
- c. If a civil penalty is unpaid for more than fifteen (15) days after payment is due, the civil penalty may be collected from any person against whom the Hearing Authority or County Building Commissioner assessed the civil penalty or fine. A civil penalty may be certified to the county auditor and collected in accordance with Indiana's Unsafe Building Law. All civil penalties collected shall be made payable to and shall be deposited in the County Unsafe Building Fund.

12. DEMOLITION REQUIREMENTS.

A building or structure shall be demolished in the County under this Ordinance only in compliance with the following requirements:

- a. All water, sewer, and other utility lines shall be plugged, capped, and properly guarded. Septic tank and drywells shall be removed or collapsed and backfilled with clean fill material.
- b. All materials and debris resulting from the demolition shall be removed from the premises, except for those items which will provide clean fill for the evacuation.
- c. After demolition, the property shall be filled to grade with clean soil and compacted.
- d. The sidewalk shall be repaired or replaced in accordance with the specifications of the municipality, if any, in which the property is located.
- e. The person performing the demolition shall provide proof of liability insurance with a coverage and in an amount deemed adequate by the Building Commissioner.

- f. The demolition shall be entirely completed and the property shall be restored to a condition that is in compliance with this Code Section within thirty (30) days from the date of the awarding of the contract for demolition.
- g. No fires of any size shall be permitted, except those set and supervised by fire department personnel.
- h. The demolition shall comply with all requirements set forth in applicable codes and permits, including the Elkhart County Building Code Ordinance.
- i. The person or firm performing the demolition shall file a performance bond with the County Building Department in an amount deemed adequate by the County Building Commissioner. That bond shall be provided to ensure that the demolition, removal, and other acts performed under this Ordinance comply with this Ordinance and are completed within the period of time set forth in the permit. The County Building Department may waive this requirement to file a bond if the Department believes that filing a performance bond is unnecessary.

13. INSPECTION.

In addition to any other rights or remedies, the County Building Department may conduct inspections of buildings or structures after a complaint concerning that building or structure has been filed with the County Building Department. The complaint shall state the name and address of the person filing it. All complaints shall be available for public inspection.

14. RECLAIMING COSTS.

The County Building Department shall attempt to reclaim all actual costs of work performed by the County to bring an unsafe building and premises into compliance with an Order to comply, or the actual cost of taking emergency action, as well as the average processing expense of One Thousand Six Hundred Fifty-eight Dollars (\$1,658.00). All monies received shall be made payable to and shall be deposited in the County Unsafe Building Fund.

15. HEARING AUTHORITY DUTIES.

The County Building Department shall have all rights, powers, privileges, and authorities as are provided under the Indiana Unsafe Building Law as the executive department authorized to administer and enforce the Indiana Unsafe Building Law. It is hereby acknowledged, understood, and declared by the Commissioners that the County Building Commissioner is required to exercise and is vested with the authority to exercise his or her discretion and judgment in order to protect and preserve the public health, safety, and general welfare of the citizens of Elkhart County, Indiana in administering and enforcing this Ordinance. The authority of the County Building Commissioner to issue, deny, suspend, or revoke, or fail or refuse to issue, deny, suspend, or revoke any permit, license, approval, order, or similar authorization under this Ordinance is hereby declared to be discretionary.



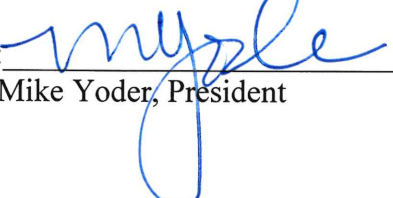
16. CONSTRUCTION AND EFFECTIVE DATE.

- a. All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed upon the effectiveness of this Ordinance. This Ordinance shall become effective from and after the date on which this Ordinance has been duly adopted by the Commissioners and published in accordance with the requirements of applicable Indiana law. Upon the effectiveness of this Ordinance, this Ordinance repeals Ordinance 08-419.
- b. In the event that any provision of this Ordinance is determined by a court of competent jurisdiction to be pre-empted by a state or federal law or regulation, the applicable provision shall automatically be deemed amended by eliminating the pre-empted provision and incorporating in its place the applicable provision of the pre-empting state or federal law or regulation.
- c. Each provision of this Ordinance shall be construed as separate. If any term or provision of this Ordinance is determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and provisions of this Ordinance shall continue in full force and effect.
- d. Compliance with the requirements of this Ordinance does not obviate or eliminate the necessity of complying with any other applicable federal, state, or local law and regulation affecting agricultural, residential, commercial, or industrial buildings, structures, or premises in Elkhart County, Indiana.
- e. The expressed repeal by this Ordinance and any implied repeal by this Ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this Ordinance. These rights, liabilities, and other proceedings are continued and penalties shall be imposed and enforced under the repealed ordinance as if this Ordinance had not been adopted.

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ORDAINED AND ADOPTED this 28<sup>th</sup> day of December, 2020.

BOARD OF COMMISSIONERS OF THE  
COUNTY OF ELKHART, INDIANA

By:   
Mike Yoder, President

ATTEST:

  
Patricia A. Pickens, Elkhart County Auditor