Town Council of Cumberland, Indiana

ORDINANCE 2015-13

AN ORDINANCE SUPPLEMENTING THE TOWN CODE
TO INCLUDE UNSAFE BUILDING REGULATIONS
AND ESTABLISHING THE UNSAFE BUILDING FUND

WHEREAS, the Cumberland Town Code currently does not provide regulations for
the repair and remediation of unsafe buildings and unsafe premises in the Town;

AND WHEREAS, such regulations are contained in the State of Indiana's unsafe
building law, Indiana Code §36-7-9, which specifically permits municipalities, by ordinance,
to incorporate such statutes into the local regulations;

AND WHEREAS, the Town Council now finds that the Town Code should be
supplemented to incorporate the state unsafe building regulations and to provide
appropriate procedures relating to the identification and remediation of unsafe buildings
and unsafe premises within that part of the Town that is located in Hancock County.

IT IS THEREFORE ORDAINED that a new chapter is added to Title IX of the Town
Code, as follows:

"CHAPTER 100: UNSAFE BUILDING REGULATIONS AND REMEDIATION"

§ 00-09-100-01. 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
Town'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 these
provisions conflict with the state Unsafe Building Law, the state law controls.

§ 00-09-100-02. ADMINISTRATOR AND HEARING AUTHORITY.
(A) Administering Department. The Cumberland Planning and Development Department is
designated as the department responsible for administering this ordinance.
(B) Enforcement Authority. The Cumberland Director of Planning and Development ("the
Director") is designated as the "enforcement authority" as provided in I.C. 36-7-9-2.
(C) Hearing Authority. The Cumberland Town Council 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.
§ 00-09-100-03. “UNSAFE BUILDING" AND “UNSAFE PREMISES" DEFINED.
For purposes of this ordinance, the term “unsafe building” has 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 an 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.

§ 00-09-100-04. “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.

§ 00-09-100-05. ORDER, NOTICE, HEARING, 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 and govern the procedures for enforcing this ordinance. 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 premise, the Director 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 between 10 days and 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.

The Director may issue an order that modifies a previously issued order, and may rescind a previously issued order, even if the order has been affirmed by the Town Council.
(B) Hearing and Action by Town Council.

1. Except as provided below, the Town Council must hold a hearing for each order the Director issues. The hearing must be held no earlier than 10 days after notice of the order is given, unless proper action is taken for a different hearing date as provided in I.C. 36-7-9-7(b). 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 Council may affirm, rescind, or modify the Director’s order. But, unless the person to whom the order was issued, or the person’s counsel, is present at the hearing, the Council may modify the order only in a manner that makes its terms less stringent. The Council may grant additional time to accomplish action required by the order, as provided in I.C. 36-7-9-7(f). If the Council affirms or modifies an order, it shall issue a continuous enforcement order, as provided in I.C. 36-7-9-7(g).

If the Council affirms an order and finds that there has been a willful failure to comply with the order, the Council may impose a civil penalty not exceeding $5,000. The Council may, in its discretion, reduce or strike a penalty. The Council may impose additional penalties, not to exceed $5,000 per penalty, if the Council finds 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 Council shall make a written record of its decisions and its supporting findings. The record of the Council’s findings and action shall be available to the public upon request, but neither the Director nor the Council is otherwise required to give any person notice of its findings and action.

2. The Council is not required to hold a hearing relating to an order by the Director 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 Council 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 Council shall conduct a hearing. If a hearing is not timely requested, such orders become final 10 days after notice is given.

(C) Judicial Review.
The Council’s decision concerning an order or its imposition of a civil penalty is subject to judicial review by the circuit or superior court of Hancock 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 the action was taken.

(D) Emergency Action Without Order or Notice.
If the Director 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 first issuing an order or giving notice, as provided in I.C. 36-7-9-9.
All proceedings concerning the enforcement of orders issued under this ordinance,
including hiring contractors to take action necessary to bring a property into compliance,
liability for costs of work performed, the Town’s recovery of costs related to the enforcement
action – including seeking a judgment from a court and imposing a lien – and all related
matters, shall be governed by the terms of the Unsafe Building Law, including but not
limited to the procedures in I.C. 36-7-9-10 through 13.5.

(F) Required Notices.
All notices issued under this ordinance shall be given as provided in I.C. 36-7-9-25. This
includes notice of orders, of hearings continued without a specified date, of statements that
public bids are to be let, and of claims for payment.

(G) Recording of Orders.
The Director shall record in the office of the Hancock 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.

§ 00-09-100-06. ESTABLISHMENT OF UNSAFE BUILDING FUND.
(A) Pursuant to I.C. 36-7-9-14 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 under
   I.C. 36-7-9-9 through 13 and 17 through 22;
2. Money received from bonds posed under I.C. 36-7-9-7;
3. Money received in satisfaction of receivers’ notes or certificates issued under I.C.
   36-7-9-20 and purchased with money from the unsafe building fund;
4. Money received for payment of settlement of civil penalties or fines imposed under
   I.C. 36-7-9-7; and
5. Money received from the collection of special assessments under I.C. 36-7-9-13.5.
(C) Money in the fund may be used for the expenses incurred in carrying out the purpose of
the Unsafe Building Law and this ordinance, 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 the Town of Cumberland;
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 required notices;
5. The bid price of work by a contractor under I.C. 36-7-9-10 or I.C. 36-7-9-17
   through 22;
6. The cost of emergency action under I.C. 36-7-9-9; and
7. The cost of notes or receivers’ certificates issued under I.C. 36-7-9-20.
§ 00-09-100-07. PUBLIC NUISANCE.
All buildings or portions thereof within the town which are determined by the Director to be unsafe as defined in this ordinance are declared to be public nuisances and, in addition to the remedies provided herein, the Town may seek the abatement of such nuisances under any applicable Town ordinance or state statute governing nuisances."

IT IS FURTHER ORDAINED that the Clerk shall cause a notice of this ordinance's adoption to be published within 30 days, and that this ordinance shall be effective upon such publication.

ALL OF WHICH IS ORDAINED BY THE TOWN COUNCIL OF CUMBERLAND, INDIANA, this 4th day of November, 2015.

A MAJORITY OF THE TOWN COUNCIL OF CUMBERLAND, INDIANA

Joe Siefker, President

Anna Pea, Vice President

Nicole Bell, Council Member

Brian Gritter, Council Member

Mark Reynolds, Council Member

ATTEST:

Erica Salmon, Clerk-Treasurer