

ORDINANCE NO. #230

UNSAFE BUILDING ORDINANCE FOR THE TOWN OF

BATTLE GROUND, INDIANA

WHEREAS the Board of Trustees of the Town of Battle Ground, Indiana desires to protect people from personal injury or property loss or damage from buildings or

structures within the Town which are in such condition to be unsafe for human habitation or unsafe to passers-by or other persons upon the premises or containing conditions which are likely to cause physical damage or contribute to physical damage to surroundings real estate, and on the property of other persons, and

WHEREAS the Board of Trustees further desires to protect the citizens of the Town of Battle Ground from

conditions which exist in buildings which attract vermin, insects, and other unwanted pests which are likely to

contribute to disease and other health hazards in the

community, and

WHEREAS the Board of Trustees of the Town of Battle Ground, Indiana have determined that the interests of the citizens of the Town of Battle Ground, Indiana, can best be protected by an ordinance regulating the conditions of

buildings, providing for the owners thereof an opportunity to correct the conditions and providing for the removal of the building and/or conditions,

IT IS NOW THEREFORE ORDAINED BY THE BOARD OF TRUSTEES

OF THE TOWN OF BATTLE GROUND, INDIANA

as follows:

Section 1. That any condition or conditions of any building, structure or part thereof in the Town of Battle Ground, Indiana, which for any reason in an unreasonable, clear and present danger to the health or physical being of persons, or is an unreasonable danger to property other than the structure itself, are hereby declared to be

unlawful conditions or an unlawful condition.

Section 2. That in determining whether a condition or conditions of a structure are unlawful condition or conditions within the meaning of this Ordinance, all

relevant factors are to be considered including but not limited to the following:

1. 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; or

5. Dangerous to a person or property because

of a violation of a statute or ordinance concerning building condition or maintenance; is considered an unsafe building.

2. For purposes of this chapter:

1. An unsafe building; and

2. The tract of real property on which the

unsafe building is located; are considered unsafe premises.

Section 3. That an unlawful condition under this Ordinance remains unlawful regardless whether the condition is a result of design, deterioration, alteration, or other factor.

Section 4. That for the purposes of this Ordinance in determining whether a condition or conditions of a building or structure is an unlawful condition the present use of the building or structure shall be considered, and the

reasonably foreseeable class of persons who may be directly affected thereby shall be considered and the property,

whether real or personal, which may be affected by any

unlawful condition and which is reasonably foreseeable

shall be considered in determining whether any condition or conditions is or are unlawful.

Section 5. That when the hearing authority for the Town of Battle Ground, Indiana, or such other person who is charged by the Board of Trustees of the Town of Battle

Ground, Indiana with enforcement of the provisions of this Ordinance believes that an unlawful condition under this Ordinance may exist, then they shall make inspection of the structure or premises for the purpose of determining

whether any unlawful conditions exist under this Ordinance.

In the event that the hearing authority cannot agree as to whether or not an unsafe building condition exists,

then they shall consult with a certified, licensed and practicing architect or engineer for a final determination.

In making a determination with respect to an unsafe

building condition or conditions, the hearing authority may consult with any other person reasonably necessary to

making such determination, including but not limited to, the State Fire Marshal, the Town of Battle Ground Volunteer Fire Department, Fire Chief, and the Tippecanoe County

Health Officer.

Section 6.

1. Upon the determination than an unsafe

building or conditions exist, the hearing 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. Repair of an unsafe building to bring it

into compliance with standards for building condition or maintenance prescribed by law;

5. Removal of part of an unsafe building;

and

6. Removal of an unsafe building.

2. The order must contain:

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) becomes final ten (10) days after notice is given, unless a hearing is requested in writing by a person holding a fee interest or life estate interest in the unsafe premises, and the request is delivered to the enforcement authority before the end of the ten-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 I.C. 36-7-9-27 relating to notification of subsequent interest holders and the enforcement authority; and

9. The name, address, and telephone number

of the enforcement authority.

3. The order must allow a sufficient time, of at

least ten (10) days from the time when notice of the order is given to accomplish the action, the order may require that a substantial beginning be made in accomplishing the action within thirty (30) days.

4. The order expires two (2) years from the day

the notice of the order is given, unless one or more of the following events occurs within that two-year period:

1. A complaint requesting judicial review is

filed under I.C. 36-7-9-9.

2. A contract for action required by the

order is let at public bid under I.C. 36-7-9-11.

3. A civil action is filed under I.C.

36-7-9-17.

5. Notice must be given by:

1. Sending a copy of the order or statement

by registered or certified mail to the residence or place of business or employment of the person to be notified, with return receipt requested;

2. Delivering a copy of the order or

statement personally to the person to be notified; or

3. Leaving a copy of the order or statement

at the dwelling or usual place of abode of the person to be notified.

6. If, after a reasonable effort, service is not

obtained by a means described in subsection (e), service may be made by publishing a notice of the order or statement in accordance with I.C. 5-3-1 (5-3-1-1 - 5-3-1-9) in the county where the unsafe premises are located.

However, publication may be made on consecutive days. If service of an order is made by publication, the publication must include the information required by subdivisions (1), (2), (4), (5), (6), (7), and (9) of section 5 (b) in I.C.

36-7-9-Sb (1), (2), (4), (5), (6), (7), and (9)) of said chapter, and must also include a statement indicating generally what action is required by the order and that the exact terms of the order may be obtained from the enforcement authority.

7. When service is made by any of the means

described in this section, except by mailing or

publication, the person making service must make an affidavit stating that he has made the service, the manner in which the order or statement, and the date of service.

The affidavit must be placed on file with the enforcement authority,

8. The date when notice of the order or

statement is considered given is as follows:

1. If the order or statement is delivered

personally or left at the dwelling or usual place of abode, notice is considered given on the day when the order or statement is delivered to the person or left at his dwelling or usual place of abode.

2. If the order or statement is mailed,

notice is considered given on the date shown on the return receipt, or, if no date is shown, on the date when the return receipt is received by the enforcement authority.

3. Notice by publication is considered given

on the date of the second day that publication was made.

9. Notice of orders, notice of statement of

rescission notice of continued hearings, and notice of a statement that public bids are to be let need not be given to a person holding a property interest in an unsafe premises if:

1. No instrument reflecting the property

interest held by the person is recorded in the recorder's office of the county where the unsafe premises is located;

2. The order or statement was recorded in

accordance with I.C. 36-7-9-26 of this chapter; and

3. The enforcement authority has received

neither written information nor actual notice of the identity of the person who holds a property interest in the unsafe premises.

A person who fails to record an instrument reflecting an interest in his unsafe premises is considered to consent to action taken under this chapter relative to which notice would otherwise be given.

Section 7. That the failure of the person, persons, entity or entities to whom the notice of unlawful condition or conditions was sent to correct the conditions within the time provided in the notice shall constitute a violation of this Ordinance, and each day that any unlawful condition shall after that date shall be considered a separate

violation of this Ordinance unless a request for hearing has been filed.

Section 8. In the event of a hearing before the hearing authority of an unlawful condition or conditions, the hearing authority shall hear evidence of the

individuals named in the notice and may conduct any

additional fact finding process which it may determine

necessary, and within a reasonable time thereafter shall issue a final determination of whether any unlawful

condition or conditions exist and in the event the

enforcement authority finds any unlawful condition or

conditions to exist after hearing, the enforcement

authority shall specifically set forth in writing the

unlawful conditions found to exist the findings of fact upon which their decision is based and a specific but

reasonable date in which the unlawful conditions are to be corrected, copies of which shall be delivered to the

individuals named in the notice.

Section 9. Any failure by any person, persons, entity or entities named in the final determination of the hearing authority to correct the unlawful condition or conditions which were found to exist within the time period provided by the Town Board, shall constitute a violation of this Ordinance and for each such condition which exists after said date and each day that any such unlawful condition shall exist after the date in which the person, persons, entity or entities were allowed to correct the same, shall constitute a separate violation of this Ordinance for each unlawful condition which exists.

Section 10. That in the event that any person, persons, entity or entities of whatsoever nature violates the provisions of this Ordinance the Town may take action in any court of proper jurisdiction in this county to

obtain a mandatory injunction or other relief to require such person, persons, entity or entities to correct the unlawful conditions and to request any other temporary and preliminary injunctive relief to protect persons and

property and further, may request final orders requiring the structure or building to be removed, sold, or other relief which is proper under the circumstances.

Section 11. That in addition to applying for any injunctive relief the Town may file Ordinance Violation charges against any person, persons, entity or entities violating this Ordinance, and for each unsafe building

condition violation such person, persons entity or entities Section 12. That in the event that the Town of Battle Ground, Indiana, files Ordinance Violation charges or seeks injunctive or other relief before any Court, then upon any determination in favor of the Town, the Town shall be

further entitled to recover and have judgment against any such person, persons, entity, or entities violating this Ordinance for the Town's reasonable attorneys fees

incurred in prosecuting any of the actions therein.

Section 13. That for the purposes of this Ordinance any building or structure shall include the real estate upon which such building or structure is situated.

Section 14. That when any unlawful condition or conditions exist under this Ordinance, which are within the control of the owner or owners of the real estate upon

which the building or structure is situated, then notice shall be given to those owners who appear of record.

Section 15. That in the event it is determined that the unlawful condition or conditions under this Ordinance which exist are solely within the control of the lessee of a building or structure other than the owner, then notice shall be given to such lessee or other person in addition to the owner or owners of the building or structure.

Section 16. That in the event that any part or parts of this Ordinance are declared to be unconstitutional or invalid in any part or parts, such part or parts shall be deemed severable and shall not affect the remainder of this Ordinance and the remainder of this Ordinance shall remain in full force and effect.

Section 17. The Board of Trustees of the Town of Battle Ground herein establishes a hearing authority which refers to persons of the provisions adopted in this

Ordinance.

Section 18. That this Ordinance shall be in full force and effect upon its adoption by the Board of Trustees of the Town of Battle Ground, Indiana, and after publication as required by law.

Adopted by the Board of Trustees of the Town of Battle Ground this 7th day of October, 1985, by a vote of ayes and nays.

Hugh Ralstin

Scott Frankenberger

Jean L. McGroarty

Dennis W Pettit

Daniel T. Kelly

Attest:

Judith E. Marks

Judith E. Marks, Clerk-Treasurer