

CHAPTER 153: UNSAFE BUILDING LAW

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Cross-reference:

*Building and construction regulations, see
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153.01 TITLE; STATE LAW REFERENCE.

(A) This chapter, and all ordinances supplemental or amendatory hereto, shall be known as the "Unsafe Building Code of the Town of Lowell, Indiana," may be cited as such, and will be referred to herein as "this chapter."

(B) IC 36-7-9-1 through 36-7-9-28, now existing or as hereafter amended, is adopted by reference as a part of this chapter.
(Ord. 2005-06, passed 3-28-05)

§ 153.02 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the content clearly indicates or requires a different meaning.

COMMUNITY ORGANIZATION. 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 40 households within those boundaries;
- (2) Is a nonprofit corporation that is representative of at least 25 households or 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 years; and
- (5) Is exempt from taxation under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code.

DEPARTMENT. The Lowell Building Department which is the town department authorized to administer this chapter.

ENFORCEMENT AUTHORITY. Either the Town Engineer, the Building Administrator or their respective designee.

HEARING AUTHORITY. The Lowell Board of Zoning Appeals, (BZA) which Board is hereby designated and shall serve as the official hearing board for disputes arising from the rules and regulations set forth in this chapter.

SUBSTANTIAL PROPERTY INTEREST. 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 present possessory interest, or an equitable interest of a contract purchaser.

UNSAFE BUILDING OR STRUCTURE. Any building or structure or part of a building or structure that is:

(1) In an impaired structural condition that makes it unsafe to person or property;

(2) A fire hazard;

(3) A hazard to public health;

(4) A public nuisance;

(5) Dangerous to person or property because of a violation of a statute or ordinance concerning building condition 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; or

(7) In any of the conditions or possesses any of the defects described below, 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, stairway 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 walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic;

(c) 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 in the building code for new buildings of similar structure, purpose or location;

(d) 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 of the building code for new buildings of similar structure, purpose or location;

(e) Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property;

(f) Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of 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 in the building code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the building code for such buildings;

(g) Whenever any portion thereof has wracked, 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;

(h) Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse;

(i) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used;

(j) 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;

(k) Whenever the building or structure, exclusive of the foundation, shows 33% or more damage or deterioration of its supporting member or members, or 50% damage or deterioration of its nonsupporting members, enclosing or outside walls or coverings;

(l) Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to children, or (ii) a harbor for trespassers;

(m) Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this town, as specified in the Lowell Building Code, Property Maintenance Code or the BOCA National Property Maintenance Code, or any law or ordinance of this state or town relating to the condition, location or structure of buildings;

(n) Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member or portion less than 50%, or in any supporting part, member or portion less than 66% of the strength, fire-resisting qualities or characteristics or 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;

(o) Whenever a building or structure used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise is determined by the Town Engineer to be unsanitary, unfit for human habitation or in such a

condition that is likely to cause sickness or disease;

(p) 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 Chief of the Fire Department or the Town Engineer to be a fire hazard;

(q) Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence;

(r) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure;

(s) Whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

UNSAFE PREMISES. A tract of real property that does not contain a building or structure on it, not including land used for production of agriculture, is

considered an unsafe premises if the tract of real property is a fire hazard; a hazard to public health; a public nuisance; or dangerous to a person or property because of a violation of a statute or an ordinance. ('80 Code, § 15.16.010) (Am. Ord. 2005-06, passed 3-28-05; Am. Ord. 2008-16, passed 8-11-08)

§ 153.03 PUBLIC NUISANCE.

All buildings or portions thereof within the town which are determined after inspection by the Town Engineer or Building Administrator to be unsafe as defined in this chapter are declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal. (Ord. 2005-06, passed 3-28-05) Penalty, see § 153.99

§ 153.04 AUTHORITY.

The Town Engineer and Building Administrator are respectively authorized to administer and to proceed under the provisions of this chapter in

ordering the repair or removal of any buildings found to be unsafe as specified therein or as specified hereafter.

(Ord. 2005-06, passed 3-28-05)

(c) Continuing maintenance and upkeep of the building and premises in accordance with standards established by ordinance.

§ 153.05 ORDER AND NOTICE.

(A) The Town Engineer or Building Administrator is authorized to issue an order 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 Chapters 150, 155 or 156;

(3) Extermination of vermin in and about the unsafe premises;

(4) Removal of trash, debris, or fire hazardous material 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) Removal of part of an unsafe building;

(7) Removal of an unsafe building; and

(8) Requiring for an unsafe building that will be sealed for a period of more than 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

(B) Notice of the order must be given in compliance with § 153.08 and 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.

(C) The order must contain:

- (1) The name of the person to whom the order is issued;
- (2) The date the order was issued;
- (3) The legal description or address of the unsafe premises that are the subject of the order;
- (4) The action that the order requires;
- (5) 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;

(6) 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;

(7) If a hearing is not required, a statement that an order under division (A)(2), (A)(3), (A)(4), or (A)(5) becomes final ten 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-day period;

(8) A statement briefly indicating what action can be taken by the enforcement authority if the order is not complied with;

(9) A statement indicating the obligation created by IC 36-7-9-27 and this chapter relating to notification of subsequent interest holders and the enforcement authority; and

(10) The name, address, and business telephone number of the enforcement authority issuing the order.

(D) An order shall allow a sufficient time, of at least ten days but not more than 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 to accomplish the action, the order may require that a substantial beginning be made in accomplishing the action within 30 days.

(E) Each order expires two 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 IC 36-7-9-9.

(2) A contract for action required by the order is let at public bid under IC 36-7-9-11.

(3) A civil action is filed under IC 36-7-9-17.

('80 Code, §§ 15.16.020, 15.16.030) (Ord. 1982-28, passed 12-28-82; Am. Ord. 2005-06, passed 3-28-05) Penalty, see § 153.99

§ 153.06 MODIFICATION OR RESCISSION OF ORDERS.

(A) The enforcement authority may issue an order that modifies the order previously issued.

(B) The enforcement authority may rescind an order previously issued, even if the order has been affirmed by the Board of Zoning Appeals. ('80 Code, §§ 15.16.050, 15.16.060) (Am. Ord. 2005-06, passed 3-28-05)

§ 153.07 EMERGENCY ORDERS.

(A) If the enforcement authority finds it necessary to take emergency action concerning an unsafe premises in order to protect life, safety, or property, it may take that action without issuing an order or giving notice. However, this emergency action must be limited to removing any immediate danger.

(B) The Building Department, acting through the enforcement authority, may recover the costs incurred by the enforcement authority in taking emergency

action, by filing a civil action in the Circuit or Superior Court of Lake County against the persons who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises at the time the enforcement authority found it necessary to take emergency action and the Building Department is not liable for the costs of the civil action.

(C) If an unsafe premises poses an immediate danger to the life or safety of persons occupying or using nearby property, the enforcement authority may, without following this chapter's requirements for issuing an order and giving notice, take emergency action to require persons to vacate and not use the nearby property until the danger has passed.

(1) However, any person required to vacate an unsafe premises under this division (C) may challenge in an emergency court proceeding the enforcement authority's determination that the premises poses an immediate danger to the life or safety of any person; and

(2) In the emergency court proceeding, the enforcement authority has the burden of proving that emergency action is necessary to protect from immediate danger the life or safety of persons occupying or using nearby property.

(D) As an alternative, the town may bring a civil action under IC 36-7-9-17 and 36-7-9-22, alleging the existence of unsafe premises presenting an immediate danger to the community sufficient to warrant emergency action. ('80 Code, § 15.16.120) (Am. Ord. 2005-06, passed 3-28-05)

Statutory reference:

Recovery of costs by enforcement authority, see IC 36-7-9-9(b)

§ 153.08 NOTICE; METHOD OF SERVICE.

(A) *Service.* Notice of orders, notice of continued hearings without a specified date, notice of a statement that public bids are to be let, and notice of claims for payment must be given by:

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(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;

date when the return receipt is received by the enforcement authority.

(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.

(B) *Publication.* If, after a reasonable effort, service is not obtained by a means described in division (A), service may be made by publishing a notice of the order or statement in accordance with IC 5-3-1. 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 divisions (1), (2), (3), (4), (5), (6), (7), (8) and (10) of § 153.05(C) and must 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.

(C) *Affidavit.* When service is made by any of the means described in this section, except by mailing or by publication, the person making service must make an affidavit stating that he has made the service, the manner in which service was made, to whom the order or statement was issued, the nature of the order or statement, and the date of service and the affidavit must be placed on file with the enforcement authority.

(D) *Effective date.* 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 or her 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

(3) Notice by publication is considered given on the date of the second day that publication was made.

(E) *Waiver of notice.* Notice of orders, notice of continued hearings without a specified date, 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 the procedures contained in IC 36-7-9-26; 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.

(F) *Consent.* A person who fails to record an

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the order is given. The board may, however, take action at the hearing, or before the hearing if a written request is received by the enforcement authority not later than five days after notice is given, to continue the hearing to a business day not later than 14 days after the hearing date shown on the order.

(C) Unless the BZA takes action to have the continued hearing held on a definite, specified date, notice of the continued hearing must be given to the person to whom the order was issued at least five days before the continued hearing date, in the manner prescribed by § 153.08 of this chapter.

(D) If an order being considered at the continued hearing was served by publication, it is sufficient to give notice of the continued hearing by publication unless the enforcement authority has received information in writing that enables it to make service under § 153.08 of this chapter by a method other than publication.

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.

(80 Code, §§ 15.16.040, 15.16.070) (Ord. 1982-28, passed 12-28-82; Am. Ord. 2005-06, passed 3-28-05)

§ 153.09 HEARINGS AND REVIEW.

(A) A hearing must be held relative to each order of the enforcement authority, except orders issued under § 153.05(A)(2), (A)(3), (A)(4), or (A)(5) of this chapter. An order issued under § 153.05(A)(2), (A)(3), (A)(4), or (A)(5) of this chapter becomes final ten days after notice is given, unless a hearing before the BZA is timely and properly requested before the ten-day period ends by a person holding a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises.

(B) Hearings before the BZA shall be held on a business day no earlier than ten days after notice of

(E) The person to whom the order was issued, any person having a substantial property interest in the unsafe premises that are the subject of the order, or any other person with an interest in the proceedings may appear in person or by counsel at the hearing. Each person appearing at the hearing is entitled to present evidence, cross-examine opposing witnesses, and present arguments.

(F) At the conclusion of any hearing at which a continuance is not granted, the hearing authority may make findings and take action to:

(1) Affirm the order;

(2) Rescind the order; or

(3) Modify the order, but unless the person to whom the order was issued, or counsel for that person, is present at the hearing, the hearing authority may modify the order in only a manner that makes its terms less stringent.

(4) In addition to affirming the order, in those cases in which the BZA finds there has been a willful failure to comply with the order, the board

may impose a civil penalty in an amount not to exceed \$5,000. The effective date of the civil penalty may be postponed for a reasonable period, after which the BZA may order the civil penalty reduced or stricken if the board is satisfied that all work necessary to fully comply with the order has been done.

(G) For purposes of an appeal under IC 36-7-9-8, or enforcement of an order under IC 36-7-9-17, action of the BZA is considered final upon the affirmation of an order even though the board may retain jurisdiction for the ultimate determination of a fine at a future date.

(H) If, at the hearing, a person to whom an order has been issued requests an additional period to accomplish action required by the order, and shows goodcause for this request to be granted, the board may grant the request, however, as a condition for allowing the additional time period, the board may require that the person post a performance bond to be forfeited if the action required by the order is not completed within the additional time period granted by the board.

(I) The BZA shall, at a public hearing, after having given notice of the time and place of the hearing by publication in accordance with IC 5-3-1, adopt a schedule setting forth the maximum amount of performance bonds applicable to various types of ordered action. The BZA shall use this schedule to fix the amount of the performance bond required under division (I) above.

(J) A record of the findings made and action taken by the BZA at a hearing shall be available to the public upon request, however, neither the enforcement authority nor the BZA is required to give any person notice of the findings and action.

(K) The amount of any civil penalty imposed under division (G) above, may be collected in the same manner as costs under IC 36-7-9-13.

(L) The amount of any civil penalty collected shall be deposited in the Town of Lowell Unsafe Building Fund.

('80 Code, § 15.16.080) (Ord. 1982-28, passed 12-28-82; Am. Ord. 2005-06, passed 3-28-05)

§ 153.10 LIABILITY FOR COSTS.

(A) When action required by an order is performed by the enforcement authority or by a contractor acting under IC 36-7-9-11, each person who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises from the time when the order requiring the work performed was recorded to the time that the work was completed is jointly and severally responsible for the following costs:

(1) The actual cost of the work performed by the enforcement authority or the bid price of work accomplished by the contractor under IC 36-7-9-11.

(2) An amount that represents a reasonable forecast of the average processing expense that will be incurred by the enforcement authority in taking the technical, administrative, and legal actions concerning typical unsafe premises that are necessary under this chapter so that the action required by an order may be performed by a contractor under IC 36-7-9-11. In calculating the amount of the average processing expense, the following costs may be considered:

(a) The cost of obtaining reliable information about the identity and location of persons who own a substantial property interest in the unsafe premises.

(b) The cost of notice of orders, notice of statements of rescission, notice of continued hearing, notice of statements that public bids are to be let or that the enforcement authority intends to accomplish the work, and notice that a hearing may be held on the amounts indicated in the record, in accordance with IC 36-7-9-25.

(c) Salaries for employees.

(d) The cost of supplies, equipment, and office space.

(B) The BZA shall determine the amount of the average processing expense at the public hearing, after notice has been given in the same manner as is required for other official action of the board or

commission. In determining the average processing expense, the board or commission may fix the amount at a full dollar amount that is an even multiple of ten.

(C) Unpaid costs are subject to the procedures in IC 36-7-9-13 and 36-7-9-13.5, and may result in a judgment, special tax assessment, and/or lien on real or personal property or persons responsible for such costs.

('80 Code, § 15.16.150) (Ord. 1982-28, passed 12-28-82; Am. Ord. 2005-06, passed 3-28-05)

§ 153.11 APPEALS.

(A) An action taken under § 153.09(F) by the BZA is subject to review by the Circuit or Superior Court of Lake County, on request of:

(1) Any person who has a substantial property interest in the unsafe premises; or

(2) Any person to whom that order was issued.

(B) A person requesting judicial review under this section must file a verified complaint including the findings of fact and the action taken by the hearing authority. The complaint must be filed within ten days after the date when the action was taken.

(C) An appeal under this section is an action de novo. The court may affirm, modify, or reverse the action taken by the BZA.

('80 Code, § 15.16.090) (Ord. 1982-28, passed 12-28-82; Am. Ord. 2005-06, passed 3-28-05)

§ 153.12 PERFORMANCE OF WORK.

(A) The work required by an order of the enforcement authority may be performed in the following manners:

(1) *Under \$10,000.* If the work is being performed under an order, other than an order under § 153.05(A)(2), (A)(3), (A)(4) of this chapter, and if the cost of this work is estimated to be less than

\$10,000, the department, acting through the town's enforcement authority or other agent, may perform the work by means of the town's own workers and any equipment owned or leased by the town and, if done in this manner:

through the unit's enforcement authority or other governmental agency using the town's own workers and equipment owned or leased by the unit.

(a) Notice the work is to be performed must be given to all persons with a substantial property interest, in the manner prescribed in division (C) below, at least ten days before the date of performance of the work by the enforcement authority.

(b) The notice must include a statement that an amount representing a reasonable estimate of the cost incurred by the enforcement authority in processing the matter and performing the work may, if not paid, be recorded after a hearing as a lien against all persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises.

(2) *\$10,000 or more.* If the work is being performed under an order other than an order under § 155.05(A)(2), (A)(3), or (A)(4) of this chapter, and if the estimated cost of this work is \$10,000 or more:

(a) The work must be let at public bid to a contractor licensed and qualified under law.

(b) The obligation to pay costs imposed by § 153.10 of this chapter is based on the condition of the unsafe premises at the time the public bid was accepted. Changes occurring in the condition of the unsafe premises after the public bid was accepted do not eliminate or diminish this obligation.

(3) If the work is being performed under an order issued under § 153.05(A)(2), (A)(3), or (A)(4) of this chapter, the work may be performed by:

(a) A contractor who has been awarded a base bid contract to perform the work for the enforcement authority; or

(b) By the department, acting

(4) Work performed under an order issued under § 153.06(A)(2), (A)(3), or (A)(4) of this chapter may be performed without further notice to the persons holding a fee interest, life estate interest, or equitable interest of a contract purchaser, and these persons are liable for the costs incurred by the enforcement authority in processing the matter and performing the work as provided by § 153.10 of this chapter.

(B) Bids may be solicited and accepted for work on more than one property if the bid reflects an allocation of the bid amount among the various unsafe premises in proportion to the work to be accomplished. The part of the bid amount attributable to each of the unsafe premises constitutes the basis for calculating the part of the costs described by § 153.10(A)(1) of this chapter.

(C) All persons who have a substantial property interest in the unsafe premises, and are subject to an order other than an order under § 153.05(A)(2), (A)(3), or (A)(4) of this chapter, must be notified about the public bid in the manner prescribed by § 153.08 of this chapter, by means of a written

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(6) The time of the bid opening;

(7) The place of the bid opening; and

(8) The name, address, and business telephone number of the enforcement authority.

(D) If the notice of the statement that public bids are to be let is served by publication, the publication must include the information required by division (C), except that it need only include a general description of the work to be accomplished. The publication must also state that a copy of the statement of public bid may be obtained from the enforcement authority.

(E) Notice of the statement that public bids are to be let must be given at least ten days before the date of the public bid, to all persons who have a substantial property interest in the property and are subject to an order other than an order under § 153.05(A)(2), (A)(3), or (A)(4) of this chapter.

statement including:

(1) The name of the person to whom the order was issued;

(2) A legal description or address of the unsafe premises that are the subject of the order;

(3) A statement that a contract is to be let at public bid to a licensed contractor to accomplish work to comply with the order;

(4) A description of work to be accomplished;

(5) A statement that both the bid price of the licensed contractor who accomplishes the work and an amount representing a reasonable estimate of the cost incurred by the enforcement authority in processing the matter of the unsafe premises may, if not paid, be recorded after a hearing as a lien against all persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises;

(F) If action is being taken under this section on the basis of an order that was served by publication, it is sufficient to serve the statement that public bids are to be let by publication, unless the enforcement authority has received information in writing that enables the unit to make service under § 153.08 of this chapter by a method other than publication. (Ord. 2005-06, passed 3-28-05)

§ 153.13 PERFORMANCE BY CONTRACTORS.

(A) The enforcement authority may cause the action required by an order issued under § 153.05(A)(2), (A)(3), (A)(4), or (A)(5) of this chapter to be performed by a contractor if:

(1) The order has been served, in the manner prescribed by § 153.08 of this chapter, on each person having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises that are the subject of the order;

(2) The order has not been complied with;

(3) A hearing was not requested under § 153.05(C)(6) of this chapter, or, if a hearing was requested, the order was affirmed at the hearing; and

(4) The order is not being reviewed under § 153.11 of this chapter.

(B) The enforcement authority may cause the action required by an order, other than an order under § 153.05(A)(2), (A)(3), (A)(4), or (A)(5) of this chapter, to be performed if:

(1) Service of an order, in the manner prescribed by § 153.08 of this chapter, has been made on each person having a substantial property interest in the unsafe premises that are the subject of the order;

(2) The order has been affirmed or modified at the hearing in such a manner that all persons having a substantial property interest in the unsafe premises that are the subject of the order are currently subject to an order requiring the accomplishment of substantially identical action;

(3) The order, as affirmed or modified at the hearing, has not been complied with; and

(4) The order is not being reviewed under § 153.11 of this chapter.

(C) If action is being taken under this section on the basis of an order that was served by publication, it is sufficient to serve the statement by publication and indicate that the enforcement authority intends to perform the work, unless the authority has received information in writing that enables it to make service under § 153.08 of this chapter by a method other than publication.

('80 Code, § 15.16.140) (Ord. 1982-28, passed 12-28-82; Am. Ord. 2005-06, passed 3-28-05)

§ 153.14 PERMISSION TO PERFORM WORK.

(A) No person, firm, or corporation, whether as owner, lessee, sublessee 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 chapter or any order issued by the Town Engineer or the Building Administrator.

(B) No permit or bond shall be required if all or a substantial part of the work required by an order is being performed by town employees.
(Ord. 2005-06, passed 3-28-05) Penalty, see 153.99

§ 153.15 CIVIL ACTIONS REGARDING UNSAFE PREMISES.

(A) The building department, acting through its enforcement authority, a person designated by the enforcement authority, or a community organization may bring a civil action regarding unsafe premises in any circuit, superior, or municipal court in Lake County, however, the building department is not liable for the costs of any such an action. In such an action, the court may grant one or more of the types of relief authorized by IC 36-7-9-18 through IC 36-7-9-22.

(B) A civil action may not be initiated under this section before the final date of an order or an extension of an order under § 153.05(D) requiring:

- (1) The completion; or
- (2) A substantial beginning toward accomplishing the completion of the required remedial action.

(C) A community organization may not initiate a civil action under this section if:

- (1) The enforcement authority or their designee has filed a civil action under this section regarding the unsafe premises; or
- (2) The enforcement authority has issued a final order that the required remedial action has been satisfactorily completed.

(D) A community organization may not initiate a civil action under this section if the real property

that is the subject of the civil action is located outside the specific geographic boundaries of the area defined in the bylaws or articles of incorporation of the community organization.

(E) At least 60 days before commencing a civil action under this section, a community organization must issue a notice by certified mail, return receipt requested, that specifies:

- (1) The nature of the alleged nuisance;
- (2) The date the nuisance was first discovered;
- (3) The location on the property where the nuisance is allegedly occurring;
- (4) The intent of the community organization to bring a civil action under this section and the relief sought in the action; and is provided to:
 - (a) The owner of record of the premises;
 - (b) Tenants located on the premises;
 - (c) The enforcement authority; and
 - (d) Any person that possesses an interest of record.

(F) In any action filed by a community organization under this section, a court may award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the prevailing party, pursuant to Indiana law.
(’80 Code, § 15.16.180) (Ord. 1982-28, passed 12-28-82; Am. Ord. 2005-06, passed 3-28-05)

Statutory reference:

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§ 153.16 INSPECTION WARRANTS.

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(A) If the owners or those in possession of a building refuse inspection, any town inspection officer

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may obtain an inspection warrant from any court of record in the county in order to determine if the building is an unsafe building. The court shall issue the warrant subject to the following conditions:

(1) The person seeking the warrant must establish that the building to be searched or inspected is to be searched or inspected as part of a legally authorized program of inspection that naturally includes the building, or that there is probable cause for believing that a condition, object, activity, or circumstance legally justifies a search or inspection of that building.

(2) An affidavit establishing one of the grounds described in division (A)(1) must be signed under oath or affirmation by the affiant.

(3) The court must examine the affiant under oath or affirmation to verify the accuracy of the affidavit.

(B) The warrant is valid only if it:

(1) Is signed by the judge of the court and bears the date and hour of its issuance above that

signature, with a notation that the warrant is valid for only 48 hours after its issuance;

(2) Describes (either directly or by reference to the affidavit) the building where the search or inspection is to occur so that the executor of the warrant and owner or the possessor of the building can reasonably determine what property the warrant authorizes an inspection of;

(3) Indicates the conditions, objects, activities, or circumstances that the inspection is intended to check or reveal; and

(4) Is attached to the affidavit required to be made in order to obtain the warrant.

(C) A warrant issued under this section is valid for only 48 hours after its issuance, must be

personally served upon the owner or possessor of the building, and must be returned within 72 hours. ('80 Code, § 15.16.170) (Am. Ord. 2005-06, passed 3-28-05)

Statutory reference:

Inspection warrants, see IC 26-7-9-16

§ 153.17 UNSAFE BUILDING FUND.

(A) The Town of Lowell Unsafe Building Fund, previously established by ordinance, shall be and is hereby reestablished pursuant to IC 36-7-9-14.

(B) The Unsafe Building Fund shall be a non-reverting fund and all deposits and expenditures therefrom shall be made without further appropriation accordingly to IC 36-7-9-14 and any other applicable law.

('80 Code, § 15.16.160) (Am. Ord. 2005-06, passed 3-28-05)

§ 153.99 PENALTY.

(A) A person 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 IC 36-7-9-27 regarding information on transfers of property, commits a Class C infraction, and

(5) Each day that the violation continues constitutes a separate offense.

(B) Whoever violates any provision of this chapter, for which no other penalty is otherwise specifically provided:

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(1) Shall be subject to the general penalty provided in § 10.99; and

(2) Each day that the violation continues

constitutes a separate offense.

('80 Code, § 15.16.190) (Am. Ord. 2005-06, passed 3-28-05)

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