

GENERAL ORDINANCE #9, 2008

AN ORDINANCE AMENDING THE TEXT OF ARTICLE IV (“UNSAFE BUILDING”) CHAPTER XIII (“NUISANCES”) OF TITLE III (“PUBLIC HEALTH AND SAFETY”) OF THE MUNICIPAL CODE OF THE TOWN OF NORTH MANCHESTER

WHEAREAS, Title III Chapter XIII Article IV of the Town of North Manchester Municipal Code deals with the policies and procedures to be used in determining unsafe buildings and the procedures for repair or demolition of the same; and

WHEAREAS, said ordinances were generally based on the provisions of Indiana Code §36-7-9-1, et seq. which have been amended from time to time; and

WHEAREAS, the provision of the Town of North Manchester Municipal Code have not been modified to keep up with amendments of the Indiana Code §36-7-9-1, et seq.

IT IS THEREFORE ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NORTH MANCHESTER as follows:

1. The text of Title III Chapter XIII Article IV of the Town of North Manchester Municipal Code as it exists is hereby repealed in its entirety.
2. Title III Chapter XIII Article IV of the Town of North Manchester Municipal Code shall now read as follows:

Section 1. TITLE. This chapter shall be known as the “Town of North Manchester Unsafe Building Code” and hereby adopts by reference Indiana Code §36-7-9-1, et seq. in its entirety as part of the Town of North Manchester’s unsafe building law in conjunction with this ordinance.

Section 2. PURPOSE AND SCOPE. The purpose and scope of these provisions are as follows:

2.1 It is the purpose of this code to provide a just, equitable and practicable method, to be cumulative with and in addition to any other remedy provided by the Town Building Code, Housing Code, or otherwise available by any other state or local law, whereby buildings or structures which from any cause may endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants, may be required to be repaired, vacated, or demolished. The purpose of this code is not to create or otherwise establish or designate any particular class or

group of persons who will or should be especially protected or benefitted by the terms of this code.

2.2 The provisions of this code shall apply to all dangerous or unsafe buildings, as herein defined, which are now in existence or which may hereafter become dangerous or unsafe in this jurisdiction.

Section 3. ALTERATIONS, ADDITIONS, AND REPAIRS. All buildings or structures which are required to be repaired under the provisions of this code shall be repaired according to the requirements of the building codes adopted by the Town of North Manchester and all other applicable building codes, state, local or otherwise.

Section 4. GENERAL. The following general provisions shall apply:

4.1 ENFORCEMENT AUTHORITY. The building commissioner of the Town of North Manchester or his/her designee is hereby authorized to enforce the provision of this ordinance as the enforcement authority. The enforcement authority may issues orders requiring action relative to any unsafe building or unsafe premises as outlined in Indiana Code §36-7-9-5. Said person shall have the power to render interpretations of this ordinance and all adopted codes and to adopt and enforce rules and supplemental regulations in order to clarify the application of its provision.

4.2 INSPECTIONS. The local or state fire marshal, local fire chief, or the enforcement authority or his /her designee is hereby authorized to make such inspections and take such actions as may be required to enforce the provision of this code.

4.3 RIGHT OF ENTRY. Whenever the enforcement authority determines it is necessary to make an inspection to enforce the provisions of this code or to determine if applicable codes are being followed or if a building is an unsafe building, the enforcement authority or his/her designee may enter the building or premises at reasonable times to inspect or perform the duties imposed by this code, provided that if such building or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the enforcement authority or his/her designee shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If entry is refused, the enforcement authority or his/her

designee shall have recourse to the remedies provided by law to secure entry.

Section 5. HEARING AUTHORITY. The Board of Public Works and Safety shall act as the Unsafe Building Hearing Authority. All decisions and findings shall be rendered in writing to the property owner, with a copy to the enforcement authority or authority's designee. Appeals to the Hearing Authority or hearings held by the same shall be processed in accordance with the provision contained in Indiana Code §36-7-9-1, et. seq. and this code. Copies of all rules or regulations adopted by the hearing authority shall be delivered to the unsafe building enforcement authority, which shall make them freely accessible to the public. The hearing authority shall have no discretion relative to interpretation of the administrative provisions of this code nor shall the hearing authority be empowered to waive requirements of this code.

Section 6. UNSAFE BUILDINGS. The following definitions apply:

6.1 For purposes of this chapter, a building or structure, or any part of a building or structure, that is:

6.1.1 in an impaired structural condition that makes it unsafe to a person or property;

6.1.2 a fire hazard;

6.1.3 a hazard to the public health;

6.1.4 a public nuisance;

6.1.5 dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance;  
or

6.1.6 vacant and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance;

is considered an unsafe building.

6.2 For purposes of this chapter:

6.2.1 an unsafe building; and

6.2.2 the tract of real property on which the unsafe building is located;

are considered unsafe premises.

6.3 For purposes of this chapter, a tract of real property that does not contain a building or structure, not including land used for production agriculture, is considered an unsafe premise if the tract of real property is:

6.3.1 a fire hazard;

6.3.2 a hazard to public health;

6.3.3 a public nuisance; or

6.3.4 dangerous to a person or property because of a violation of a statute or an ordinance.

6.4 For the purpose of this code any building or structure which has any or all the conditions or defects hereinafter described shall be deemed to be unsafe building, provided that such condition or defects exist to the extent that the life, health property or safety of the public or its occupants or potential occupants are endanger or where such conditions constitute a nuisance which may endanger life, limb, health, morals, property, safety or welfare of the general public:

6.4.1 Whenever any door, aisle, passageway, stairway, or other means of exit is not sufficient width or size or is not so arranged as to provide safe adequate means of exit in case of fire or panic.

6.4.2 Whenever the walking surface of any aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe adequate means of exit in case of fire or panic.

6.4.3 Whenever any portions 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 the minimum requirements of the building code for new buildings.

6.4.4 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.

6.4.5 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.

6.4.6 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.

6.4.7 Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

6.4.8 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.

6.4.9 Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.

6.1.10 Whenever any building or structure has been damaged by fire and more than six (6) months goes by from the date of the fire and the building has not been repaired.

6.1.11 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 health officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.

6.1.12 Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or 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.

6.1.13 Inadequate or insufficient bath, toilet or kitchen facilities.

6.1.14 Inadequate or insufficient water supply or water supply systems.

6.1.15 Inadequate or insufficient or other deficient air cooling, air heating or water heating equipment.

6.1.16 Any condition or conditions in violation of other applicable ordinances of the town, and/or the building standards or codes of the county or the state.

## Section 7. CONDUCT OF HEARING.

7.1 RULES. Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

7.2 ORAL EVIDENCE. Oral evidence shall be taken.

7.3 HERESAY EVIDENCE. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence.

7.4 ADMISSIBILITY OF EVIDENCE. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in court of competent jurisdiction in this state.

7.5 EXCLUSION OF EVIDENCE. Irrelevant and unduly repetitious evidence shall be excluded.

7.6 RIGHTS OF PARTIES. Each party shall have these rights, among others:

7.6.1 To call and examine witnesses on any matter relevant to the issue of the hearing;

7.6.2 To introduce documentary and physical evidence;

7.6.3 To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

7.6.4 To impeach any witness regardless of which party first called the witness to testify;

7.6.5 To rebut the evidence;

7.6.6 To be represented by an attorney admitted to practice law in the State of Indiana.

## 7.7 OFFICIAL NOTICE OF DOCUMENTS AND THINGS.

7.7.1 WHAT MAY BE NOTICED? In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact or of official records of the hearing authority and ordinances of the town or rules and regulations of the hearing authority and of any notices or inspections of the town. These include all notices issued by the enforcement authority, including the inspection report and photographs.

7.7.2 PARTIES TO BE NOTIFIED. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.

7.7.3 OPPORTUNITIES TO REFUTE NOTICED MATTERS. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the hearing authority.

7.7.4 INSPECTION OF THE PREMISES. The hearing authority may inspect any building or premises involved in the appeal during the course of the hearing, provided that (i) notice of such inspection shall be given to the parties before the inspection is made, (ii) the parties are given opportunity to be present during the inspection, and (iii) the hearing authority shall state for the record, upon completion of the inspection, the material facts observed and the conclusions drawn there from. Each party then shall have a right to rebut or explain the matters so stated by the hearing authority.

Section 8. The Town of North Manchester specifically acknowledges and adopts and incorporates by references all policies, procedures and definitions as spelled out in Indiana Code §36-7-9-1, et seq., as the policies, procedures and definitions, and more specifically adopts the definition of "Known or recorded substantial property interest" in Indiana Code §36-7-9-2.

Section 9. It is the specific intent of this ordinance to incorporate all future amendments or changes to the unsafe building law, Indiana Code §36-7-9-1, et seq., as amendments to the Town of North Manchester's unsafe building law as they are enacted as defined in said statute. If any provision of this ordinance conflicts with any provision of Indiana Code §36-7-9-1, et seq., as amended from time to time, the provisions of the state statutes shall control.

Section 10. There is hereby created an "Unsafe Building Fund" for the deposit of any funds collected under this ordinance.

Section 11. ATTORNEY FEES. In the event the Town is required to bring any action in a court of law to enforce any order of the enforcement authority or any violation of the Unsafe Building Code, the town shall be entitled to recover costs, attorney fees and expenses from the property owner.



PASSES AND ADOPTED by the Town Council of the Town of North Manchester,  
Indiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Town Council President/Presiding Officer

FIRST READING: \_\_\_\_\_ Yes Votes: \_\_\_\_\_ No Votes: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk-Treasurer

SECOND READING: \_\_\_\_\_ Yes Votes: \_\_\_\_\_ No Votes: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk-Treasurer

THIRD READING: \_\_\_\_\_ Yes Votes: \_\_\_\_\_ No Votes: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Treasurer

\_\_\_\_\_  
Clerk-

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2008, at \_\_\_\_\_ P.M.

\_\_\_\_\_  
Town Council President/Presiding Officer

Approved this day, \_\_\_\_\_, 2008 by the Fire Prevention and  
Building Safety Commission of the State of Indiana.

\_\_\_\_\_  
Chairman

