

## **TITLE XV: LAND USAGE**

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**CHAPTER 150: BUILDING AND CONSTRUCTION REGULATIONS**

Section

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**Cross-reference:**

*Building codes adopted, regulations, permits etc., see §§ 155.120 et seq.*  
*Unsafe building law, see Ch. 153*

**GENERAL PROVISIONS**

**§ 150.01 DIRECT DEPOSIT OF SUMP PUMP DISCHARGED ON STREET AND SIDEWALKS PROHIBITED.**

It is unlawful to directly discharge onto any sidewalk street, public highway, or roadway in the town, any direct discharge from any sump pump or footing tile from any building or structure. (Ord. 1993-18, passed - -93) Penalty, see § 10.99

**Cross-reference:**

*Construction wastes on street and sidewalks prohibited, see § 97.07*

**§ 150.15 LICENSE REQUIRED.**

Except as expressly permitted herein, no person shall do or perform any work to construct, alter, remodel, remove, repair or demolish any structure, or to engage in the business of or act in the capacity of a contractor or specialty contractor without first obtaining a valid license from the Building Department. (Ord. 2010-02, passed 6-28-10)

**§ 150.16 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BOARD.** The Lowell Board of Licensing and Registration.

**BUILDING DEPARTMENT.** The Building Department for the Town of Lowell, which operates under the supervision of the Building Department Superintendent.

**CONTRACTOR.** Any person who, in any capacity other than as the employee of another for wages as the sole compensation, undertakes to construct, repair, move, wreck or demolish any structure. The term includes a subcontractor or specialty contractor but does not include a person who only furnishes materials or supplies.

**DIRECTOR.** The Director of the Town of Lowell Community Development Department.

**MAINTENANCE PERSON.** An individual who is employed on a permanent basis to keep the premises of a business establishment in good repair.

**PERSON.** An individual, partnership, corporation, limited liability company or any other form of unincorporated enterprise.

**SPECIALTY CONTRACTOR.** A contractor who specializes in a particular branch of the building construction industry and who shall be registered in his or her specialty in order to work in the specific field in which he or she is registered.  
(Ord. 2010-02, passed 6-28-10)

### § 150.17 EXEMPTIONS.

The provisions of this subchapter shall not apply to the following:

(A) An authorized employee of the United States, the State of Indiana, County of Lake, Town of Lowell or any political subdivisions thereof, so long as the employee does not hold him or herself out for hire and is acting within the scope of his or her employment.

(B) Public utilities where construction, maintenance and development work is performed by their own employees and incidental to their business.

(C) The owner of a one or two family dwelling who undertakes to alter, remodel, repair and maintain his or her own dwelling(s). In the event an owner may retain the services of a contractor, subcontractor or specialty contractor to assist the owner in performing such work, the contractor, subcontractor and/or specialty contractor shall be registered.

(D) The owner-occupant (in the case of a new single-family dwelling unit) when the owner-occupant is him or herself alone constructing the residential unit he or she will occupy. This exclusion shall not be available more than one time every five years when

applied to construction of a new residence. If any owner-occupant determines he or she cannot alone complete the construction, any person hired to complete any portion of the construction, installation, alteration, remodel or repair must hold a valid license as described in this subchapter.

(E) Any construction, alteration, improvement or repair of improvements located on any site and project where state and federal law supersedes this subchapter.

(F) Any individual who is employed or acts as a maintenance person as that term is defined in this subchapter at his or her place of employment.

(G) The owner of a commercial building replacing windows or doors on his or her building or performing nonstructural general maintenance on his or her building, for which a building permit is not required.  
(Ord. 2010-02, passed 6-28-10)

### § 150.18 BOARD OF LICENSING.

(A) *Creation and composition.* There is hereby created a Board of Licensing and Registration (Board). The Lowell Board of Zoning Appeals (BZA) is hereby designated and shall serve as the Board.

(B) *Powers and duties.* The Board shall have the duty of administering and enforcing the provisions of this subchapter. The Board shall adopt rules and regulations and do all other things necessary to carry out its duties.

(C) *Meetings.* The Board shall hold meetings as necessary to carry out its duties. A majority of the membership of the Board shall constitute a quorum for the transaction of all business, and the majority vote of all the members in attendance at a meeting shall control any issue presented to the Board.  
(Ord. 2010-02, passed 6-28-10)

**§ 150.19 EXAMINATIONS AND ISSUANCE OF LICENSE.**

(A) *Examinations.* Any person 18 years of age or older may apply for a license required by this subchapter. The applicant's qualifications shall be determined by a written or oral examination, which shall be given by and under the supervision of the Director. At the discretion of the Director, the written portion of the examination may, in special cases, be given in oral fashion.

(1) Each applicant for a general contractor's license shall be examined with reference to his or her ability to read plans, ability to interpret specifications, general knowledge of the proper use of materials required for any construction project, general familiarity with the acceptable standards of good construction, and knowledge of the requirements of the laws of the state, this code and the ordinances of the town.

(2) Each applicant for an electrical or subcontractor's license shall be examined with reference to his or her knowledge of the laws of the state, this code and the ordinances of the town affecting his or her specialty.

(3) Each of the above applicants shall be graded upon their examination as follows: 100% for the written examination or 100% for the oral examination, with a passing grade being 75% for either examination. If any applicant taking a test fails to make a passing grade as provided, the Director shall refuse to grant the license.

(4) A person with a plumbing license issued by the Indiana Plumbing Commission, and any other contractor licensed or certified by the state, will not be required to take an examination but must register with the Building Department to obtain a license and perform work in the town.

(5) Should an examination be required to qualify for a license required by this subchapter, each applicant shall designate in his or her application the

individual who will be required to take the examination. The individual must be an active officer of the firm or organization applying for the license.

(6) An individual cannot qualify to take an examination on behalf of him or herself or any other person if the individual had previously been examined and a license issued as a result of the examination, so long as that license remains unexpired or uncanceled; provided, however, that if the individual passing the examination shall, at any time, sever his or her connection with the contractor to whom the license was issued, it shall be the duty of both the individual and the contractor to file written notice immediately with the Board and, at the same time, surrender the license previously issued for cancellation. The contractor to whom the license was issued may, at the time of surrendering the license, delegate another active officer of his or her firm or organization to qualify for an examination as required in this subchapter without the payment of any additional examination fee or license fee for the remainder of that license period. The individual who has passed the examination for the license will not be required to take another examination and shall qualify for a license upon the payment of the examination or license fee and upon the submission of the required bond and insurance.

(7) Any individual required to take an examination under this subchapter, and who fails to qualify for the license by failure to pass the examination, shall not be eligible to take another such examination for a period of three months.

(8) Any contractor possessing a valid registration certificate on the effective date of this subchapter shall be exempt from the examination requirement established by this subchapter, unless the registration certificate expires or is revoked.

(9) Examinations under this subchapter shall be given by the Director beginning on September 1, 2010. From the effective date of this subchapter through August 31, 2010, a person may obtain a license required by this subchapter by (a) completing

an application; (b) filing proof of a current license from and bond posted with Lake County, Indiana, of the type and in the amounts required by the ordinances and resolutions of Lake County, Indiana; (c) submitting proof of insurance as required by § 150.23; and (d) paying the license fee required by § 150.21.

(B) *Issuance.* If the results of any examination required in this subchapter prove to be satisfactory, the Director shall issue a license upon payment of the required fee and submission of the required bond and insurance.

(Ord. 2010-02, passed 6-28-10)

### § 150.20 APPLICATION FOR LICENSE.

(A) *License application.* To obtain a license or have a state license validated, a person shall, prior to being permitted to take an examination if the same is required, complete an application for license form with the Director which shall be on a form prescribed by the Board and which shall require, in part, the following information:

- (1) Name.
- (2) Address.
- (3) Description of type of work performed.
- (4) Qualifications.

(5) Identification of all other licenses, registrations, certifications and the like currently held.

(6) Identification of the names and qualifications of all individuals who will be providing services under this license.

(B) Each applicant shall submit a non-refundable application fee in the sum of \$100 to the Town Clerk-Treasurer when the application is submitted.

(Ord. 2010-02, passed 6-28-10)

### § 150.21 LICENSE TERMS AND FEES.

(A) *Initial fee.* Before a license is issued to an applicant, the applicant shall pay an initial fee of \$100 to the office of the Town Clerk-Treasurer.

(B) *Expiration and renewal.*

(1) All licenses shall be valid from the date of issuance until December 31st of the same calendar year and may be renewed by the payment of a renewal fee of \$50 for each calendar year thereafter.

(2) A license issued by the town is valid on the payment of the annual renewal fee of \$50 per annum, unless the person to whom the license was issued fails to perform any work under that license for a period of five years from the date of the last renewal thereof; in which case, the license shall be deemed expired, and a new initial application shall be made by the contractor.

(3) Upon receipt of an application for renewal by an applicant, who during the preceding license period has violated any of the provisions of this subchapter or any rules promulgated by the Board, the Director or his or her designee shall make such investigation as deemed necessary to determine the fitness of the applicant for renewal of his or her license. In the event the Director or his or her designee determines after the investigation that a question exists as to whether the license should be renewed, the Director or his or her designee shall so advise the applicant. The applicant shall thereafter within 30 days show cause to the Board why his or her license should be renewed. The Board shall notify the applicant of its decision.

(4) No license shall be renewed during any period in which a licensee is under citation for violation of any of the provisions of this subchapter or any rules promulgated by the Board. However, the Board, at its discretion, may temporarily extend the applicant's current license for a period or periods of time not to exceed 30 days, or until the act complained

of shall be heard by the Board, and during any period of appeal provided for by this subchapter.

(5) Whenever the licensee becomes disabled or dies, the legal representative of the licensee may apply to have the balance of the unexpired term of the license issued to the legal representative without any further cost, provided that such legal representative applies for and successfully passes the examination and submits the required insurance for the license.

(C) *Prior license.* All contractors or specialty contractors who had a valid registration certificate issued by the town prior to the effective date of this subchapter under prior law shall not be required to refile an initial application under § 150.20, pay the initial fee required thereunder, or take the examination required by § 150.19, but thereafter shall conform to all other requirements of this subchapter.

(D) *Issuance.* Upon submission of an appropriately completed application, fee, bond and certificate of insurance as required by this subchapter, the Director or his or her designee shall issue a license to the applicant.  
(Ord. 2010-02, passed 6-28-10)

**§ 150.22 BOND.**

All contractors must provide to the Building Department as a part of the license application either a bond in the amount of \$5,000 to ensure full and complete compliance with all applicable ordinances, rules, regulations and/or laws at the local, state and/or federal level or proof that such a bond has been duly recorded in the County Recorder’s office pursuant to the requirements of this subchapter.  
(Ord. 2010-02, passed 6-28-10)

**§ 150.23 INSURANCE.**

(A) All contractors must further submit to the Building Department as part of the license application

a current certificate of insurance establishing that the contractor maintains public liability, property and personal injury coverage in an amount not less than \$500,000 per occurrence or pay \$1,000,000 in the aggregate, which certificate contains adequate notice of cancellation requirements indicating that the town will be notified in the event of cancellation at least 30 days prior to the effective date of cancellation.

(B) If during the term of a license the insurance certificate or policy expires, is revoked, rescinded or cancelled, or coverage is otherwise terminated, or if the insurance company ceases doing business, goes bankrupt, is placed in receivership, or there is other reason to believe it will not be able to meet its obligations, the license for which it has been obtained shall be deemed immediately suspended until such time as a new certificate or policy is recorded and filed with the Director. An applicant or licensee who fails to notify the Director of any such problems with his or her insurance policy, certificate or company of which he or she is aware shall be subject to punishment by the Board, including but not limited to suspension, revocation of the license, fine or permanent ineligibility for obtaining any license from the town.  
(Ord. 2010-02, passed 6-28-10)

**§ 150.24 REVOCATION OF LICENSE.**

The following shall constitute grounds for the revocation of a license:

- (A) Cancellation of or failure to maintain the bond required under § 150.22.
- (B) Cancellation of or failure to maintain the insurance coverage required under § 150.23.
- (C) Failure to pay the license and/or renewal fees under § 150.21.

(D) Violation of any provision of this code of ordinances or any other ordinance of the town, or state or federal laws related to the work or services

performed by the contractor, including but not limited to a violation of § 155.125.

(E) Failure to correct any red card or inspection violation within the required time frame and/or proceeding with a project in violation of any red card inspection notice.

(F) Fraud and/or misrepresentation of any fact as set forth in the application for license and/or any supplements thereto.

(G) Gross negligence or gross incompetency while engaged in the business of acting in the capacity of a contractor or subcontractor within the meaning of this subchapter.

(H) Aiding, abetting or knowingly combining or conspiring with an unlicensed person with the intent to evade the provisions of this subchapter.

(I) Abandonment without legal excuse of any construction project or operation engaged in or undertaken as contractor or subcontractor.

(J) Diversion of funds or property received for a specified purpose, and for the purpose and prosecution or completion of any construction project or operation, and the application or use of such funds for any other project or operation, obligation or purpose with the intent to defraud or deceive creditors or the owners.

(K) Willful departure from or disregard of plans or specifications in any material respect, without the consent of the person entitled to have the particular construction or operation completed.

(L) The doing of any willful or fraudulent act as contractor or subcontractor as a consequence of which another is substantially injured.

(M) Disregarding a stop work order which has been issued for violation of ordinances or the building codes or laws; provided, when a contract has been executed or commenced, the contractor may proceed,

nevertheless, to complete the contract on the condition that he or she will make the necessary adjustments and repairs.

(N) Conviction of a felony for obtaining money under false pretenses, extortion, forgery, embezzlement, criminal conspiracy to defraud, or other like offense; and if a duly certified or exemplified copy of the record of conviction in the proceeding is filed with the Board, the Board shall revoke the license.  
(Ord. 2010-02, passed 6-28-10)

### § 150.25 REVOCATION PROCEDURES.

(A) In the event that the Director or his or her designee determines that grounds exist to revoke a license, the Director or his or her designee shall immediately serve written notice of the intent to revoke at least ten days prior to its effective date upon the licensee and advise the licensee that the licensee may request a hearing in front of the Board.

(B) The Board may, upon a complaint filed by a member of the Building Department, or upon the filing of a verified complaint in writing by a contractee, prefer charges against any licensee under this subchapter. The Board shall forthwith issue a notice directing the licensee within 20 days after service of notice to appear and answer to the complaint showing cause, if any, why his or her license should not be suspended or revoked. The licensee may request a hearing on the charges, and the Board shall, within 30 days, set a date for a hearing. The complaint shall contain a statement of facts pertaining to the specific charges of the violation of this subchapter, other ordinances and/or state law pertaining to the building construction, or of any act which may be the cause of suspension or revocation of a license. The licensee may be present and may be represented by counsel at the hearing.

(C) When a hearing is requested by a licensee on charges brought under this subchapter, the Board shall set the time and place when the hearing shall be held.

(D) A service of notice upon the licensee shall be fully effective upon mailing a copy thereof, by United States Registered Mail, with return receipt requested, in a sealed envelope with postage fully paid thereon, addressed to the licensee at his or her last address of record as shown in the Building Department's office. Failure of the licensee to answer may be deemed to be an admission by him or her of the facts stated in the complaint, and his or her license thereupon may be suspended forthwith upon the complaint filed thereon and without any further evidence in this case. The Board shall have the authority, in its discretion, to continue such cause for further hearing should the circumstances of this case warrant this action.

(E) Whenever the Board shall determine that a licensee is in violation of the terms of this subchapter, the Board shall have the power to suspend such license for a definite period, to revoke the license or to issue an order against the licensee to correct the violation, fixing a reasonable time within which the correction shall be made or accomplished and, upon compliance with such order, the Board may dismiss the complaint. If the licensee shall not correct the violation within the time required by the previous order of the Board, the Board shall have the power to extend the time for correction of the violation or shall have the right to suspend the licensee's license for a determinative period or may revoke the license without any further right to hearing.

(F) After the revocation of any license, such license shall not be renewed, and no new license shall be issued to the same licensee within a period of at least one year subsequent to the date of revocation. After the expiration of the one-year period, a new license shall only be issued upon proper showing that all violations, acts or omissions for which the license was revoked have been corrected and that all conditions imposed by the decision of the revocation correction order or suspension have been fully complied with.

(G) Any licensee who is aggrieved by the decision of the Board may take an appeal from the Board as allowed by the laws of the state.

(H) Whenever a new license is issued to any applicant whose license has previously been revoked, the issuance shall be treated as an initial issuance, and the applicant shall be required to pay the fee and shall be required to comply with the requirements applicable to all other applicants.

(Ord. 2010-02, passed 6-28-10)



## CHAPTER 151: FLOOD HAZARD AREAS

### Section

- 151.01 Statutory authorization
- 151.02 Statement of purpose
- 151.03 Definitions
- 151.04 Duties of the Administrator
- 151.05 Regulatory flood elevation
- 151.06 Improvement location permit
- 151.07 Preventing increased damages
- 151.08 Protecting buildings
- 151.09 Other development requirements
- 151.10 Variances
- 151.11 Disclaimer of liability
- 151.12 Abrogation and greater restrictions
  
- 151.98 Violations
- 151.99 Penalty

### ***Cross-reference:***

*Zoning code, see Ch. 155*

*Violations declared a nuisance, see § 155.202*

### **§ 151.01 STATUTORY AUTHORIZATION.**

The Indiana Legislature granted the power to local units of government (IC 36-7-4) to control land use within their jurisdictions in order to accomplish the objectives set forth in the following statement of purpose.

(Ord. 1993-8, passed 2-8-93; Am. Ord. 2004-20, passed 12-13-04)

### ***Statutory authorization:***

*Local planning and zoning, see IC 36-7-4*

### **§ 151.02 STATEMENT OF PURPOSE.**

The purpose of this chapter is to guide development in the flood hazard areas in order to reduce the potential for: loss of life and property,

health and safety hazards, and extraordinary public expenditures for flood protection and relief. Under the authority granted to local units of government to control land use in their jurisdiction, which includes taking into account the effects of flooding, the town adopts the following floodplain management regulations in order:

(A) To prevent unwise developments from increasing flood or drainage hazards to others;

(B) To protect new buildings and major improvements to buildings from flood damage;

(C) To protect human life and health from the hazards of flooding;

(D) To lessen the burden on the taxpayer for flood control projects, repairs to flood-damaged public facilities and utilities, and flood rescue and relief operations;

(E) To maintain property values and a stable tax base by minimizing the potential for creating flood-blighted areas; and

(F) To make federally subsidized flood insurance available for structures and their contents in the town by fulfilling the requirements of the National Flood Insurance Program.

(Ord. 1993-8, passed 2-8-93; Am. Ord. 2004-20, passed 12-13-04)

### **§ 151.03 DEFINITIONS.**

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

**BUILDING.** See **STRUCTURE.**

**DEVELOPMENT.** Any manmade change to improved or unimproved real estate, including but not limited to:

- (1) Construction, reconstruction, or placement of a building or any addition to a building;
- (2) Installing a manufactured home on a site, preparing a site for a manufactured home, or installing a recreational vehicle on a site for more than 180 days;
- (3) Installing utilities, erection of walls and fences, construction of roads, or similar projects;
- (4) Construction of flood control structures, such as levees, dikes, dams, channel improvements, and the like;
- (5) Mining, dredging, filling, grading, excavation, or drilling operations;
- (6) Construction and/or reconstruction of bridges or culverts;
- (7) Storage of materials; or
- (8) Any other activity that might change the direction, height, or velocity of flood or surface waters.

**DEVELOPMENT.** Does not include activities such as the maintenance of existing buildings and facilities, such as painting, reroofing; resurfacing roads; or gardening, plowing, and similar agricultural practices that do not involve filling, grading, excavation, or the construction of permanent buildings.

**EXISTING MANUFACTURED HOME PARK** or **SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which manufactured homes are

to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of this chapter.

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK** or **SUBDIVISION.** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FBFM.** The Flood Boundary and Floodway Map.

**FEMA.** The Federal Emergency Management Agency.

**FHBM.** The Flood Hazard Boundary Map.

**FIRM.** The Flood Insurance Rate Map.

**FLOOD.** A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, the unusual and rapid accumulation, or the runoff of surface waters from any source.

**FLOODPLAIN.** The channel proper and the areas adjoining any wetland, lake or watercourse which have been or hereafter may be covered by the regulatory flood. The floodplain includes both the floodway and the floodway fringe districts.

**FLOOD PROTECTION GRADE** or **FPG.** The elevation of the regulatory flood plus two feet at any given location in the Special Flood Hazard Area.

**FLOODWAY.** The channel of a river or stream and those portions of the floodplains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flood flow of the regulatory flood of any river or stream.

**FLOODWAY FRINGE.** Those portions of the floodplain lying outside the floodway.

**LETTER OF MAP AMENDMENT (LOMA).**

An amendment to the currently effective FEMA map that establishes that a property is not located in a Special Flood Hazard Area (SFHA). A **LOMA** is only issued by FEMA.

**LETTER OF MAP REVISION (LOMR).**

An official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.

**LOWEST FLOOR.** The lowest of the following:

- (1) The top of the lowest floor of a building;
- (2) The top of the basement floor;
- (3) The top of the garage floor, if the garage is the lowest level of the building;
- (4) The top of the floor level of any enclosure below an elevated building where the walls of the enclosure provide any resistance to the flow of the flood waters, unless:
  - (a) The walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters, by providing a minimum of two openings (in addition to doorways and windows) having a total area of one square inch for every one square foot of enclosed area subject to flooding. The bottom of all such openings shall be no higher than one foot above grade.
  - (b) Such enclosed space shall be usable for the parking of vehicles and building access.
  - (c) The lowest point of the interior grade of any crawl space is at or above the BPE.

**MANUFACTURED HOME.** A structure, transportable in one or more sections, which is built on a permanent chassis, and is designed for use with or without a permanent foundation when attached to the required utilities. The term **MANUFACTURED HOME** does not include a recreational vehicle.

**NEW MANUFACTURED HOME PARK or SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of this chapter.

**RECREATIONAL VEHICLE.** A vehicle which is: (1) built on a single chassis; (2) 400 square feet or less, when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational camping, travel, or seasonal use.

**REGULATORY FLOOD.** The flood having a 1% probability of being equaled or exceeded in any given year, as calculated by a method and a procedure which is acceptable to and approved by the Indiana Natural Resources Commission and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in § 151.05 of this chapter. The **REGULATORY FLOOD** is also known by the term “base flood.”

**SFHA or SPECIAL FLOOD HAZARD AREA.** Those lands within the jurisdiction of the town that are subject to the inundation by the regulatory flood. The **SFHAs** of the town are generally identified as such on the Flood Insurance Rate Map of the town prepared by the Federal Emergency Management Agency and dated October 18, 1983. The **SFHAs** of those parts of unincorporated Lake County that are within the

extraterritorial jurisdiction of the town, or that may be annexed into the town, are generally identified as such on the Flood Insurance Rate Map prepared for Lake County by the Federal Emergency Management Agency and dated September 2, 1981.

**STRUCTURE.** A **STRUCTURE** that is principally above ground and is enclosed by walls and a roof. The term includes a gas or liquid storage tank, a manufactured home, or a prefabricated building. The term also includes recreational vehicles to be installed on a site for more than 180 days.

**SUBSTANTIAL IMPROVEMENT.** Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary or safety code requirements, or any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

(Ord. 1993-8, passed 2-8-93; Am. Ord. 2004-20, passed 12-13-04)

#### § 151.04 DUTIES OF THE ADMINISTRATOR.

The Building Administrator shall implement this chapter and hereafter be referred to as the Floodplain Administrator. The Floodplain Administrator for the town is appointed to review all development and subdivision proposals to insure compliance with this chapter, including but not limited to the following duties:

(A) Ensure that all development activities within the SFHAs of the jurisdiction of the town meet the requirements of this chapter.

(B) Provide information and assistance to citizens, upon request, about permit procedures and floodplain construction techniques.

(C) Ensure that construction authorization has been granted by the Indiana Natural Resources Commission for all development projects subject to § 151.07 of this chapter, and maintain a record of such authorizations (either copy of actual permit, letter of recommendation, or floodplain analysis and regulatory assessment).

(D) Maintain a record of the “as-built” elevation of the top of the lowest floor (including basement) of all new and/or substantially improved buildings constructed in the SFHA. Inspect before, during and after construction.

(E) Maintain a record of the engineer's certificate and the “as built” floodproofed elevation of all buildings subject to § 151.08 of this chapter.

(F) Cooperate with state and federal floodplain management agencies to improve base flood and floodway data, and to improve the administration of this chapter. Submit reports as required for the National Flood Insurance Program.

(G) Maintain for public inspection, and furnish upon request, regulatory flood data, SFHA maps, Letters of Map Amendment (LOMA), Letters of Map Revision (LOMR), copies of DNR permits, floodplain analysis and regulatory assessment, federal permit documents, and “as built” elevation and floodproofing data for all buildings constructed subject to this chapter.

(H) Notify adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.

(Ord. 1993-8, passed 2-8-93; Am. Ord. 2004-20, passed 12-13-04)

**§ 151.05 REGULATORY FLOOD ELEVATION.**

This chapter's protection standard is the regulatory flood. The best available regulatory flood data is listed below. Whenever a party disagrees with the best available data, the party submitting the detailed engineering study needs to replace existing data with better data, and submit it to the Department of Natural Resources for review and approval.

(A) The regulatory flood elevation and floodway limits for the SFHAs of Cedar Creek and McConnel Ditch shall be as delineated on the 100-year flood profiles in the Flood Insurance Study of the town dated June 1979, and the corresponding Flood Boundary Floodway Map dated October 18, 1983, prepared by the Federal Emergency Management Agency.

(B) The regulatory flood elevation and floodway limits for each of the remaining SFHAs delineated as an A Zone on the Flood Insurance Rate Map of the town shall be according to the best data available, as provided by the Department of Natural Resources.

(C) The regulatory flood elevation and floodway limits for the SFHAs of those parts of unincorporated Lake County that are within the extraterritorial jurisdiction of the town shall be as delineated on the 100-year flood profiles in the Flood Insurance Study of Lake County dated March 2, 1981, and the corresponding Flood Boundary Floodway Map dated September 2, 1981, prepared by the Federal Emergency Management Agency.

(D) If the SFHA is delineated as an on the County Flood Insurance Rate Map, the regulatory flood elevation and floodway limits shall be according to the best data available, as provided by the Department of Natural Resources.

(Ord. 1993-8, passed 2-8-93; Am. Ord. 2004-20, passed 12-13-04)

**§ 151.06 IMPROVEMENT LOCATION PERMIT.**

No person, firm, corporation, or governmental body not exempted by state law shall commence any development in the SFHA, without first obtaining an Improvement Location Permit from the Floodplain Administrator. The Floodplain Administrator shall not issue an Improvement Location Permit, if the proposed development does not meet the requirements of this chapter.

(A) The application for an Improvement Location Permit shall be accompanied by the following:

- (1) A description of the proposed development.
- (2) Location of the proposed development sufficient to accurately locate property and structure in relation to existing roads and streams.
- (3) A legal description of the property site.
- (4) A site development plan showing existing and proposed development locations and land grades.
- (5) Elevation of the top of the lowest floor (including basement) of all proposed development. Elevation should be in National Geodetic Vertical Datum of 1929 (NGVD) of North American Vertical Datum (NAVD). In either case, the conversion formula should be included.

(B) Upon receipt of an application for an Improvement Location Permit, the Floodplain Administrator shall determine if the site is located within an identified floodway, floodway fringe or within the floodplain where the limits of the floodway have not yet been determined.

(1) (a) If the site is in a identified floodway, the Floodplain Administrator shall require the applicant to forward the application, along with all

pertinent plans and specifications, to the Department of Natural Resources and apply for a permit for construction in a floodway.

(b) Under the provisions of IC 14-28-1, a permit from the Natural Resources Commission is required prior to the issuance of a local building permit for any excavation, deposit, construction or obstruction activity located in the floodway. This includes land-preparation activities, such as filling, grading, clearing, paving, and the like, undertaken before the actual start of construction of the building.

(c) No action shall be taken by the Floodplain Administrator until a permit has been issued by the Natural Resources Commission granting approval for construction in the floodway.

1. Once a permit has been issued by the Natural Resources Commission, the Floodplain Administrator may issue the local Improvement Location Permit, provided the provisions contained in §§ 151.07 and 151.08 of this chapter have been met.

2. The Improvement Location Permit cannot be less restrictive than the permit issued by the Natural Resources Commission.

(2) If the site is located in an identified floodway fringe, then the Floodplain Administrator may issue the local Improvement Location Permit, provided the provisions contained in §§ 151.07 and 151.08 of this chapter have been met. The key provision is that the top of the lowest floor of any new or substantially improved structure shall be at or above the Flood Protection Grade (FPG).

(3) (a) If the site is in an identified floodplain where the limits of the floodway and floodway fringe have not yet been determined, and the drainage area upstream of the site is greater than one square mile, the Floodplain Administrator shall require the applicant to forward the application, along with pertinent plans and specifications, to the

Department of Natural Resources for review and comment.

(b) No action shall be taken by the Floodplain Administrator, until either a permit for construction in the floodway or a letter of recommendation, citing the 100-year flood elevation and the recommended Flood Protection Grade, has been received from the Department of Natural Resources.

(c) Once the Floodplain Administrator has received the proper permit or floodplain analysis and regulatory assessment approving the proposed development, an Improvement Location Permit may be issued; provided the conditions of the Improvement Location Permit are not less restrictive than the conditions received from the Department of Natural Resources, and the provisions contained in §§ 151.07 and 151.08 herein have been met.

(4) (a) If the site is in an identified floodplain where the limits of the floodway and floodway fringe have not yet been determined, and the drainage area upstream of the site is less than one square mile, the Floodplain Administrator shall require the applicant to provide an engineering analysis, showing the limits of the floodway, the floodway fringe and the 100-year elevation for the site.

(b) Upon receipt, the Floodplain Administrator may issue the local Improvement Location Permit, provided the provisions contained in §§ 151.07 and 151.08 herein have been met. (Ord. 1993-8, passed 2-8-93; Am. Ord. 2004-20, passed 12-13-04) Penalty, see § 151.99

#### **§ 151.07 PREVENTING INCREASED DAMAGES.**

No development in the SFHA shall create a damaging or potentially damaging increase in flood heights or velocity or threat to public health and safety.

(A) Within the floodway identified on the Flood Boundary and Floodway Map, the Flood Insurance Rate Map, or the engineering analysis as provided in § 151.06(B)(4)(a), the following standards shall apply:

(1) No development shall be allowed which, acting alone or in combination with existing or future development, will cause any increase in the elevation of the regulatory flood; and

(2) For all projects involving channel modifications or fill (including levees), the town shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data.

(B) Within all SFHAs identified as A Zones (no 100-year flood elevation and/or floodway/floodway fringe delineation has been provided), the following standard shall apply: the total cumulative effect on the proposed development, when combined with all other existing and anticipated development, will not increase the regulatory flood elevation more than one-tenth of one foot, and will not increase flood damages or potential flood damages.

(C) *Public health standards in all SFHAs.*

(1) No development in the SFHA shall include locating or storing chemicals, explosives, buoyant materials, flammable liquids, pollutants, or other hazardous or toxic materials below the Flood Protection Grade, unless such material are stored in a floodproofed storage tank or building constructed according to the requirements of § 151.08 of this chapter.

(2) New and replacement sanitary sewer lines and on-site waste disposal systems may be permitted; provided all manholes or other above ground openings are located above the FPG, or those that are located below the FPG are watertight. (Ord. 1993-8, passed 2-8-93; Am. Ord. 2004-20, passed 12-13-04) Penalty, see § 151.99

**§ 151.08 PROTECTING BUILDINGS.**

In addition to the damage prevention requirements of § 151.07, all buildings to be located in the SFHA shall be protected from flood damage below the FPG.

(A) This building protection requirement applies to the following situations:

(1) Construction or replacement of any new building having a floor area greater than 400 square feet;

(2) Structural alterations made to:

(a) An existing (previously unaltered) building, the cost of which equals or exceeds 50% of the value of the pre-altered building (excluding the value of the land);

(b) Any previously altered building;

(3) Reconstruction or repairs made to a damaged building that are valued at or more than 50% of the market value of the building (excluding the value of the land) before damage occurred;

(4) (a) Installing a manufactured home on a new site or a new manufactured home on an existing site.

(b) This chapter does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage; and

(5) Installing a travel trailer or recreational vehicle on a site for more than 180 days.

(B) This building protection requirement may be met by one of the following methods. The Floodplain Administrator shall maintain a record of compliance with these building protection standards, as required in § 151.04 of this chapter.

(1) A residential or nonresidential building may be constructed on a permanent landfill in accordance with the following:

(a) The fill shall be placed in layers no greater than one foot deep before compacting to 95% of the maximum density obtainable with the Standard Proctor Test method.

(b) The fill should extend at least ten feet beyond the foundation of the building before sloping below the FPG.

(c) The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than three horizontal to one vertical.

(d) The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.

(e) The top of the lowest floor, including basements (see definition of lowest floor in § 151.03), shall be at or above the FPG.

(2) A residential or nonresidential building may be elevated in accordance with the following:

(a) The building or improvements shall be elevated on posts, piers, columns, extended walls, or other types of similar foundation, provided:

1. Walls of any enclosure below the elevated floor shall be designed to automatically equalize hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters, through providing a minimum of two openings (in addition to doorways and windows) having a total area of one square inch for every one square foot of enclosed area subject to flooding. The bottom of all such openings shall be no higher than one foot above grade.

2. The lowest point of the interior grade of any crawl space is at or above the BFE.

3. Any enclosure below the elevated floor is used for storage of vehicles and building access.

(b) The foundation and supporting members shall be anchored and aligned in relation to flood flows and adjoining structures so as to minimize exposure to known hydrodynamic forces, such as buoyancy, current, waves, ice, and floating debris.

(c) All areas below the FPG shall be constructed of materials resistant to flood damage.

1. The top of the lowest floor (including basement) and all electrical, heating, ventilating, plumbing, air conditioning equipment and utility meters shall be located at or above the FPG.

2. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG.

(3) Manufactured homes and recreational vehicles to be installed or substantially improved on a site for more than 180 days must meet one of the following anchoring requirements:

(a) The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site:

1. Outside a manufactured home park or subdivision;

2. In a new manufactured home park or subdivision;

3. In an expansion to an existing manufactured home park or subdivision; or

4. In an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as a result of a flood.

(b) 1. This requirement applies to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision that has not been substantially damaged by a flood.

2. The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elements that are no less than 36 inches in height above grade, and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(4) Recreational vehicles placed on a site shall either:

(a) Be on the site for less than 180 consecutive days; and

(b) Be fully licensed and **READY FOR HIGHWAY USE** (defined as being on its wheels or jacking system, attached to the site only by quick disconnect-type utilities and security devices, with no permanently attached additions); or

(c) Meet the requirements for manufactured homes in subdivision (3) above.

(5) A nonresidential building may be floodproofed to the FPG (in lieu of elevating), if it is done in accordance with the following:

(a) A registered professional engineer shall certify that the building has been designed so that, below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the

effects of the regulatory flood. The building design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice.

(b) Floodproofing measures shall be operable without human intervention and without an outside source of electricity. (Ord. 1993-8, passed 2-8-93; Am. Ord. 2004-20, passed 12-13-04) Penalty, see § 151.99

**§ 151.09 OTHER DEVELOPMENT REQUIREMENTS.**

(A) The Floodplain Administrator shall review all proposed subdivisions to determine whether the subdivision lies in a flood hazard area, as defined elsewhere by ordinance.

(1) If the Floodplain Administrator finds the subdivision to be so located, the Floodplain Administrator shall forward plans and materials to the Indiana Department of Natural Resources for review and comment.

(2) The Floodplain Administrator shall require appropriate changes and modifications in order to assure that:

(a) It is consistent with the need to minimize flood damages;

(b) All public utilities and facilities, such as sewer, gas, electrical and water systems, are located and constructed to minimized or eliminate flood damage;

(c) Adequate drainage is provided so as to reduce exposure to flood hazards:

(d) On-site waste disposal systems, if provided, will be so located and designed to avoid impairment of them, or contamination from them, during the occurrence of the regulatory flood.

(B) Developers shall record the 100-year flood elevation on all subdivision plats containing lands (identified elsewhere by this chapter) within a flood hazard area, prior to submitting the plats for approval by the Plan Commission.

(C) All owners of manufactured home parks or subdivisions located within the SFHA identified as Zone A on the community's FHBM or FIRM shall develop an evacuation plan for those lots located in the SFHA, file it with the local Plan Commission, and then have it filed with and approved by the appropriate community emergency management authorities. (Ord. 1993-8, passed 2-8-93; Am. Ord. 2004-20, passed 12-13-04)

### § 151.10 VARIANCES.

(A) The Board of Zoning Appeals may consider issuing a variance to the terms and provisions of this chapter, provided the applicant demonstrates that:

(1) There exists a good and sufficient cause for the requested variance;

(2) The strict application of the terms of this chapter will constitute an exceptional hardship to the applicant; and

(3) The granting of the requested variance will not increase flood heights, create additional threats to public safety, cause additional public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.

(B) The Board of Zoning Appeals may issue a variance to the terms and provisions of this chapter, subject to the following standards and conditions:

(1) No variance or exception for a residential use within a floodway subject to § 151.07(A) and (B) of this chapter may be granted.

(2) Any variance or exception granted in a floodway subject to § 151.07(A) or (B) of this chapter will require a permit from the Department of Natural Resources.

(3) Variances or exceptions to the Building Protection Standards of § 151.08 may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.

(4) Variances or exceptions may be granted for the reconstruction restoration of any structure individually listed on the Register of Historic Places or the Indiana State Survey of Historic Architectural, Archaeological and Cultural Sites, Structures, Districts, and Objects;

(5) All variances shall give the minimum relief necessary and shall be such that the maximum practical flood protection will be given to the proposed construction; and

(6) The Board of Zoning Appeals shall issue a written notice to the recipient of a variance or exception that the proposed construction will be subject to increased risks to life and property, and could require payment of increased flood insurance premiums. (Ord. 1993-8, passed 2-8-93; Am. Ord. 2004-20, passed 12-13-04) Penalty, see § 151.99

### § 151.11 DISCLAIMER OF LIABILITY.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes, and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this chapter does not create any liability on the part of the community, the Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this chapter

or any administrative decision made lawfully thereunder.

(Ord. 1993-8, passed 2-8-93; Am. Ord. 2004-20, passed 12-13-04)

**§ 151.12 ABROGATION AND GREATER RESTRICTIONS.**

(A) This chapter repeals and replaces other ordinances adopted by the Town Council to fulfill the requirements of the National Flood Insurance Program.

(B) However, this chapter does not repeal the original resolution or ordinance adopted to achieve eligibility in the Program.

(C) Nor does this chapter repeal, abrogate, or impair any existing easements, covenants, or deed restrictions.

(D) Where this chapter and other ordinances, easements, covenants, or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall take precedence.

(E) In addition, the Town Council shall assure that all National Flood Insurance Program regulations (44 C.F.R. § 60), as well as Indiana laws and regulations regarding floodplain issues (312 IAC 10, IC 14-28-1 and IC 14-28-3), are met.

(Ord. 1993-8, passed 2-8-93; Am. Ord. 2004-20, passed 12-13-04)

**§ 151.98 VIOLATIONS**

(A) (1) Failure to obtain an Improvement Location Permit in the SFHA or failure to comply with the requirements of a permit or conditions of a variance shall be deemed to be a violation of this chapter.

(2) All violations shall be considered a common nuisance, and be treated as such in accordance with the provisions of the Zoning Code set forth in Chapter 155 of this code of ordinances.

(B) A separate offense shall be deemed to occur for each day the violation continues to exist.

(C) The Town Planning Commission shall inform the owner the any such violation is considered a willful act to increase flood damages and, therefore, may cause coverage by a Standard Flood Insurance Policy to be suspended.

(D) (1) Nothing herein shall prevent the town from taking such other lawful action to prevent or remedy any violations.

(2) All costs connected therewith shall accrue to the person or persons responsible.  
(Ord. 1993-8, passed 2-8-93; Am. Ord. 2004-20, passed 12-13-04)

**§ 151.99 PENALTY.**

(A) Any person found guilty of violating any provision of this chapter shall, upon conviction thereof, and in addition to any other penalty that may be provided, be subject to a fine of up to \$2,500 for each violation.

(B) Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of a provision of this chapter is committed, continued or permitted by the person.  
(Ord. 1993-8, passed 2-8-93; Am. Ord. 2004-20, passed 12-13-04)



**CHAPTER 152: STORM WATER DETENTION**

Section

***General Provisions***

- 152.01 Storm water management plan required for building permit or development approval
- 152.02 Storm water management plan requirements
- 152.03 Maintenance of detention facility

***Erosion and Sediment Control Program***

- 152.10 Introduction; purpose
- 152.11 Definitions
- 152.12 Permits
- 152.13 Review and approval
- 152.14 Inspection
- 152.15 Enforcement
- 152.16 Appeals

- 152.99 Penalty

***Cross-reference:***

*Storm Water Management, see Ch. 53*  
*Subdivision regulations, drainage, see*  
*§ 154.058*

**GENERAL PROVISIONS**

**§ 152.01 STORM WATER MANAGEMENT PLAN REQUIRED FOR BUILDING PERMIT OR DEVELOPMENT APPROVAL.**

From and after the enactment of this chapter, excepting an application for a single family residence or accessory building in an approved subdivision a change of use to commercial where there is no change in the rate of surface water runoff, or a change of use

from one commercial use to another where there is no change in the rate of surface water runoff, no building permit nor preliminary subdivision or planned unit development approval shall be issued to any developer, person, corporation, partnership or any other entity without first having been submitted to the town through its Building Administrator and Town Engineer, a stormwater management plan prepared by an Indiana Registered Professional Engineer or Land Surveyor delineating the method and manner of handling and disposing of storm water for the project in question. Specific residential or commercial developments may be excluded from the provisions of this chapter by the Plan Commission upon finding of inapplicability. ('80 Code, § 15.20.010) (Ord. 1977-33, passed - -77)

**§ 152.02 STORM WATER MANAGEMENT PLAN REQUIREMENTS.**

The storm water management plan shall include appropriate drawings and calculations to support the following requirements:

(A) The rate of surface water runoff shall not exceed its property in undeveloped state.

(B) Drainage systems and detention basins shall have adequate capacity to bypass through the development for flow from all upstream areas.

(C) The detention storage to be provided will be calculated on the basis of the 100-year frequency rainfall as published by the National Weather Service for this area. The detention volume required will be that necessary to accept the runoff of a 100-year rainfall for any and all durations from the fully developed drainage area tributary to the reservoir by either of the following methods:

(1) A detention pond (dry or wet) with a volume equal to the 100-year runoff less the release rate.

(2) Excavation within an existing flood plain above normal water level, below high water in a volume equal to the total 100-year runoff from the totally developed area for a 24-hour period. ('80 Code, § 15.20.020) (Ord. 1977-33, passed - -77)

### **§ 152.03 MAINTENANCE OF DETENTION FACILITY.**

Provision shall be made to the satisfaction of the reviewing agency for continued maintenance of the detention facility. ('80 Code, § 15.20.030) (Ord. 1977-33, passed - -77)

## ***EROSION AND SEDIMENT CONTROL PROGRAM***

### **§ 152.10 INTRODUCTION; PURPOSE.**

(A) During the construction process, soil is highly vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of sewers and ditches and the dredging of lakes. In addition, clearing and grading during construction cause the loss of native vegetation necessary for terrestrial and aquatic habitat.

(B) As a result, the purpose of this subchapter is to safeguard persons, protect property, and prevent damage to the environment in the Town of Lowell, Indiana. This subchapter will also promote the public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land

in or under the jurisdiction of the Town of Lowell, Indiana. (Ord. 2005-03, passed 1-24-05)

### **§ 152.11 DEFINITIONS.**

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

***BMP (BEST MANAGEMENT PRACTICE).*** An activity or structure that helps or is intended to improve the quality of storm water runoff.

***CLEARING.*** Any activity that removes vegetative surface cover.

***CONSTRUCTION ACTIVITY.*** Land disturbing activities associated with the construction of infrastructure or structures. ***CONSTRUCTION ACTIVITY*** does not include routine ditch or road maintenance or minor landscaping projects.

***CONSTRUCTION PLAN.*** An ordered collection of drawings, narratives, data and documents assembled for review, approval, authorization, and establishment of guidelines for the imitation, management, and completion of construction activities at a project site regulated by this chapter. ***STORM WATER POLLUTION PREVENTION PLAN (SWP3)*** is a part of the ***CONSTRUCTION PLAN***.

***CONSTRUCTION PROJECT SITE.*** The physical location(s) or legal boundaries within which a construction activity or a series of construction activities is planned to be or is being accomplished.

***CONSTRUCTION SITE ACCESS.*** A stabilized stone surface at all points of construction related egress from a project site planned and installed in accordance with specifications approved by the town and an approved reference manual, and maintained throughout the period of land disturbing activities for the purpose of capturing and detaining sediment carried by fires, tracks, or other surface contact components of vehicles, earthmoving equipment, or material and personnel transport conveyances.

**DEPARTMENT.** Reference to the Indiana Department of Environmental Management (IDEM).

**DEVELOPER.** A project site owner or person financially responsible for construction activity; or an owner of property who sells, leases, or offers for sale or lease, any lot(s) in a subdivision or larger common plan of development or sale.

**DIRECTOR.** The chief executive officer of IDEM or his or her designee.

**DRAINAGE WAY.** Any channel that conveys surface storm water runoff.

**EROSION CONTROL.** A measure that prevents erosion.

**EROSION AND SEDIMENT CONTROL PLAN.** A set of plans prepared by or under the direction of a licensed professional engineer or certified professional in stormwater quality (CPSWQ) indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction.

**EROSION AND SEDIMENT CONTROL SYSTEM.** Appropriate control measures combined to prevent or minimize the wearing away of soil, sediment, and rock fragments by water, wind, or ice, and to intercept detached or suspended particles to prevent their discharge from or within a project site.

**FINAL STABILIZATION.** The establishment of permanent vegetative cover or the application of a permanent, non-erosive material to areas where all land disturbing activities have been completed and no additional land disturbing activities are planned under the current plan.

**GRADING.** Excavation or fill of material, including the resulting conditions thereof.

**INDIVIDUAL BUILDING LOT.** A single parcel of land in a multi-parcel development.

**LAND DISTURBING ACTIVITY.** Any manmade change of the land surface, including

underlying soil, excavating, filling, transporting, and grading.

**MEASURABLE STORM EVENT.** A precipitation event that results in a total measured accumulation of precipitation equal to or greater than one-half inch of rainfall.

**MS4 (MUNICIPAL SEPARATE STORM SEWER SYSTEM).** A system of stormwater conveyances either owned or operated by a governmental agency that IDEM has designated as responsible to eliminate or minimize pollutant loadings of the stormwater entering waters of the state.

**MS4 AREA.** Within this subchapter, the corporate limits of the Town of Lowell under an NPDES permit regulated by 327 IAC 15-13.

**MS4 OPERATOR.** The Building Administrator or Director of Public Works or other person locally responsible for development, implementation, or enforcement of the Storm Water Quality Management Plan (SWQMP) for the Town of Lowell as regulated under 327 IAC 15-13.

**NOTICE OF PLAN APPROVAL (NPA).** A notification from the MS4 Operator to the project site owner that the construction plan for a project site has been reviewed and approved by the MS4 Operator. The project site owner must insert the NPA with the Notice of Intent sent to the Director of IDEM at least 48 hours prior to initiating land disturbing activities at the construction project site.

**NPDES.** The National Pollutant Discharge Elimination System, a program administered by IDEM to reduce or eliminate the pollutant loadings into public waters.

**PEAK DISCHARGE.** The maximum rate of flow from a point of stormwater discharge during or immediately following a storm event, usually in reference to a specific return period or design storm.

**PERIMETER CONTROL.** A barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

**PERMANENT STABILIZATION.** The establishment, at a uniform minimum of 70% across the disturbed areas, of vegetative cover or permanent

non-erosive material that ensures the resistance of the underlying soil to erosion, sliding, or other movement.

**PHASING OF CONSTRUCTION.** Sequential development of smaller portions of a large project site, stabilizing each portion before initiating land disturbing activities on the next portion, to minimize exposure of land to erosion.

**RUNOFF.** An accumulation of storm water flow that is moving across the surface of the earth as sheet flow or concentrated flow in natural surface watercourses, drains, or waterways.

**SEDIMENT.** Solid material, both organic and mineral, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice and has come to rest on the earth's surface.

**SEDIMENTATION.** The settling and accumulation of unconsolidated sediment carried by storm water runoff.

**SEDIMENT CONTROL.** Measures that prevent eroded sediment from leaving the site.

**SITE.** A parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation.

**SITE DEVELOPMENT PERMIT.** A permit issued by the municipality for the construction or alteration of ground improvements and structures for the control of erosion, runoff, and grading.

**START OF CONSTRUCTION.** The first land-disturbing activity associated with a development, including land preparation such as clearing, grading, and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of all accessory buildings such as garages.

**STORM WATER POLLUTION PREVENTION PLAN (SWP3).** A plan developed to eliminate or minimize the impact of storm water pollutants resulting from construction and post-construction activities.

**STORM WATER QUALITY MEASURE.** A practice or combination of practices to control or minimize pollutants associated with storm water runoff.

**TEMPORARY STABILIZATION.** The covering of soil to ensure its resistance to erosion, sliding, or other movement. **TEMPORARY STABILIZATION** includes vegetative cover, anchored mulch, or other non-erosive materials applied at a uniform minimum density of 70% across the disturbed areas of a project site.

**TRACKING.** The movement and re-depositing of dirt, mud, aggregate, sediment, or other storm water pollutants from a project site by the actions of wheels, tires, skids, tracks, or other surface contact components of cars, trucks, heavy equipment, or material and personnel transport conveyances.

**WATERCOURSE.** Any body of water, including, but not limited to lakes, ponds, rivers, streams, creeks and bodies of water delineated or existing within the Town of Lowell.

**WATERWAY.** A channel that directs surface runoff to a watercourse or to a public storm drainage system.  
(Ord. 2005-03, passed 1-24-05)

## § 152.12 PERMITS.

(A) The erosion and sediment control plan submitted to the MS4 Operator shall include all documents and information required within 327 IAC 15-5 and all other information requested by the MS4 Operator.

(B) No person shall be granted a site development permit without the approval of an erosion and sediment control plan by the Lowell MS4

Operator, or designated representative for land-disturbing activity, uncovering one or more acres of land. (Individual building lots less than one acre, see division (C) below.)

(C) The developer of an individual building lot containing less than one acre, but which is a part of a multi-lot construction project permitted under division (B) above, shall be required to complete a declaration

of responsibility for erosion and sediment control for a small residential lot prior to receipt of a location improvement plan. This declaration assigns responsibility for conformance to the construction plan as required in 327 IAC 15-5-7.5 to the individual building lot developer.

(D) No site development permit is required for the following activities:

(1) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.

(2) Existing nursery and agricultural operations conducted as a permitted main or accessory use.

(E) Each site development permit application shall bear the name(s) and address(es) of the owner or developer of the site and of any consulting firm retained by the applicant together with the name of the applicants principal contact at such firm and shall be accompanied by a filing fee of \$10 plus \$1 per lot.

(F) The applicant will be required to file with the Town of Lowell a faithful performance or maintenance bond, letter of credit, or other improvement security in an amount deemed sufficient by the MS4 Operator to cover all costs of improvements, landscaping, maintenance of improvements for such period as specified by the Town of Lowell and engineering and inspection costs to cover the cost of failure or repair of improvements installed on the site.  
(Ord. 2005-03, passed 1-24-05) Penalty, see § 152.99

## § 152.13 REVIEW AND APPROVAL.

(A) The MS4 Operator will review each application for a site development permit to determine its conformance with the provisions of this chapter. Within 28 days after receiving an application, the MS4 Operator shall approve, approve with conditions, or disapprove the application. Possible actions are further defined as:

(1) *Approve.* The permit application is found to be completely consistent with the requirement within this subchapter, therefore, the MS4 Operator shall issue a notice of plan approval (NPA);

(2) *Approve with conditions.* The permit application is generally consistent with the requirements within this subchapter, but specific minor modifications are required to meet all of the applicable requirements. Therefore, the MS4 Operator shall issue the permit subject to these written conditions along with a conditional notice of plan approval (CNPA); or

(3) *Disapprove.* The permit application does not meet the requirements of this subchapter and requires modifications that would result in significant changes to the construction plan. Therefore, the MS4 Operator shall disapprove the application indicating the reason(s) and procedure for submitting a revised application and/or submission.

(B) The developer must include the NPA or CNPA as verification of plan approval with the notice of intent (NOI) sent to the Director of IDEM in accordance with 327 IAC 15-5-6(a) at least 48 hours prior to land-disturbing activities.

(C) The initiation of construction activity following notification by the MS4 Operator that the plan does not meet the requirements of this subchapter is a violation and subject to enforcement action.

(D) If the project site owner does not receive notification within 28 days after the plan is received by the MS4 Operator stating that the plan is disapproved, the project site owner may submit the NOI letter information to IDEM in accordance with 327 IAC 15-5-6(a).

(E) If notification of a disapproved plan is received after the review period outlined in § 152.13(D), and following commencement of

construction activities, the plans must be modified to meet the requirements of this subchapter and resubmitted within 14 days of receipt of the notification

of disapproved plans.  
(Ord. 2005-03, passed 1-24-05) Penalty, see § 152.99

#### § 152.14 INSPECTION.

(A) The permittee shall maintain visible copy of the approved erosion and sediment control plan on site.

(B) Every active site having an erosion and sediment control plan shall be subject to inspection by the MS4 Operator, or designated representative, for compliance with the plan.

(C) Inspectors shall prepare and file written reports after every inspection.

(D) Inspectors shall notify the on-site personnel or the developer in writing when violations are being observed, describing items to address and curative actions to be immediately taken.

(E) It shall be a condition of every site development permit that the MS4 Operator or designated inspection representative has the right to enter the construction project site periodically to inspect for compliance with the site development permit and this subchapter.  
(Ord. 2005-03, passed 1-24-05) Penalty, see § 152.99

#### § 152.15 ENFORCEMENT.

*Violations.* In the event that any person holding a site development permit pursuant to this subchapter violates the terms of the permit or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or development site so as to be detrimental to the public welfare or injurious to prosperity or improvements in the neighborhood, the MS4 Operator may issue a:

(A) Written warning indicating actions deemed contrary to the permit which are required to be corrected and brought into compliance within 48 hours; or

(B) Stop-work order; revocation of permit in writing to any persons engaged in the doing or causing of such work to be done, and all persons shall forthwith stop such work until authorized by the MS4 Operator to proceed with the work on the site.  
(Ord. 2005-03, passed 1-24-05) Penalty, see § 152.99

#### § 152.16 APPEALS.

Upon receipt of a written violation resulting in penalties against a site development permit, the developer may file a written appeal to the Lowell Storm Water Management Board via certified mail or hand delivery to the Building Administrator for review of the penalties. All appeals shall be in writing, under oath, and must be delivered to the Building Administrator within 30 days from the date of the notice of violation or the developer waives his or her right to appeal.

(A) The Board shall complete its review within 60 days of receipt of a timely request for appeal. The Board's determination on the appeal shall be in writing and set forth in detail the reasons for its decision.

(B) In evaluating the appeal, the Board shall be bound by the standards and review criteria contained or referenced herein.

(C) All determinations of the Board arising out of this section shall be final.  
(Ord. 2005-03, passed 1-24-05)

#### § 152.99 PENALTY.

(A) No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any terms of §§ 152.10 et seq.

(B) Any person violating any of the provisions of §§ 152.10 et seq. shall be deemed guilty of an infraction and each day during which any violation of any of the provisions of §§ 152.10 et seq. is committed, continued, or permitted, shall constitute a separate

offense.

(C) Upon conviction of any violation, the person, partnership, or corporation shall be punished by a fine of not more than \$2,500 for each offense, each day.

(D) In addition to any other penalty authorized by this section, any person, partnership or corporation convicted of violating any of the provisions of §§ 152.10 et seq. shall be required to bear the cost and expenses of such restoration.

(Ord. 2005-03, passed 1-24-05)



## CHAPTER 153: UNSAFE BUILDING LAW

### Section

- 153.01 Title; state law reference
- 153.02 Definitions
- 153.03 Public nuisance
- 153.04 Authority
- 153.05 Order and notice
- 153.06 Modification or rescission of orders
- 153.07 Emergency orders
- 153.08 Notice; method of service
- 153.09 Hearings and review
- 153.10 Liability for costs
- 153.11 Appeals
- 153.12 Performance of work
- 153.13 Performance by contractors
- 153.14 Permission to perform work
- 153.15 Civil actions regarding unsafe premises
- 153.16 Inspection warrants
- 153.17 Unsafe Building Fund
  
- 153.99 Penalty

### ***Cross-reference:***

*Building and construction regulations, see Ch. 150*

### **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)

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

(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:

(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.

(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 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.

(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 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

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.

(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 good cause 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

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

(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 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;

- (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.

(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,

(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:**

*Civil actions regarding unsafe premises, see IC 36-7-9-17*

**§ 153.16 INSPECTION WARRANTS.**

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

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:

(2) Each day that the violation continues constitutes a separate offense.  
(’80 Code, § 15.16.190) (Am. Ord. 2005-06, passed 3-28-05)