

ORDINANCE NO. 2013- 330
AMENDED AND RESTATED
ELKHART COUNTY BUILDING CODE ORDINANCE

WHEREAS Indiana Code Sections 36-1-3-1 et seq. permit any county in the State of Indiana to exercise any power or perform any function necessary to the public interest in the context of its county or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS the Board of Commissioners of the County of Elkhart, Indiana is the County executive and legislative body and is by law authorized to adopt ordinances for the protection of the public health, safety, and general welfare of the residents of Elkhart County, Indiana;

WHEREAS the purpose of this Ordinance is to provide minimum standards for the protection of life, limb, health, environment, public safety, and welfare, and for the conservation of energy in the design, construction, repair, and remodeling of buildings in the unincorporated area of Elkhart County, Indiana and in any municipality which elects, by ordinance, to make itself subject to this Ordinance;

WHEREAS this Ordinance amends, restates, replaces, and supersedes Ordinance No. 08-400 known as the Elkhart County Building Code Ordinance;

NOW, THEREFORE, BE IT ORDAINED as follows:

1. DEFINITIONS. For purposes of this Ordinance, the terms below shall be defined as follows:

a. "Building Commissioner" shall mean the Elkhart County Building Commissioner and his or her duly authorized representatives. Authorized representatives shall include all employees holding positions identified within the budget classifications for the Planning Division and the Code Enforcement Division of the annual budget as approved and as amended by the Elkhart County Council from time to time.

b. "Building Department" shall mean the Elkhart County Building Department. The Elkhart County Building Department is hereby re-established and confirmed as an Elkhart County Department.

c. "Commissioners" shall mean the county executive for the County of Elkhart, Indiana.

d. "Construction" shall be defined as provided in Indiana Code § 22-12-1-7, as amended, but shall also include:

(i) The conversion of buildings and structures, or parts of them, from one occupancy classification to another;

(ii) The movement or demolition of buildings, structures, and equipment for the operation of buildings and structures; and/or

(iii) The erection, assembly, alteration, equipment, use, occupancy, location, maintenance, repair, rehabilitation, remodeling of, and additions to buildings, structures, and appurtenances.

e. "County" shall mean the County of Elkhart, State of Indiana.

f. "Director" shall mean the Elkhart County Plan Director.

g. "Permit" shall mean a building permit required by and to be issued in accordance with the terms and provisions of Section 6 of this Ordinance.

h. Unless otherwise provided in this Ordinance, the definitions provided in Indiana Code § 22-12-1 et seq., as amended, shall govern the use of those terms as contained in this Ordinance.

2. STATE REQUIREMENTS. In the event that any of the requirements of this Ordinance are found to be in conflict with any of the rules, regulations, and statutes of the Indiana Fire Prevention and Building Safety Commission, the requirements of the rules, regulations, and statutes of the Indiana Fire Prevention and Building Safety Commission shall control and govern. Pursuant to Indiana Code §22-13-2-3(b), the following rules and regulations adopted by the Indiana Fire Prevention and Building Safety Commission are hereby adopted by reference which adoption shall be construed to include all amendments as of the date of this Ordinance and any later amendments to these provisions:

- a. Indiana Building Code (Title 675, Article 13 of the Indiana Administrative Code).
- b. Indiana One and Two Family Dwelling Code (Title 675, Article 14 of the Indiana Administrative Code).
- c. Indiana Plumbing Code (Title 675, Article 16 of the Indiana Administrative Code).
- d. Indiana Electrical Code (Title 675, Article 17 of the Indiana Administrative Code).

- e. Indiana Mechanical Code (Title 675, Article 18 of the Indiana Administrative Code).
- f. Indiana Energy Conservation Code (Title 675, Article 19 of the Indiana Administrative Code).
- g. Indiana Swimming Pool Code (Title 675, Article 20 of the Indiana Administrative Code).
- h. Indiana Fire Prevention Code (Title 675, Article 22 of the Indiana Administrative Code).
- i. Indiana Supplementary Fire Safety Rule (Title 675, Article 24 of the Indiana Administrative Code).
- j. Indiana Fuel Gas Code (Title 675, Article 25 of the Indiana Administrative Code).
- k. Indiana Visitability Rule for One and Two Family Dwellings and Townhouses (Title 675, Article 27 of the Indiana Administrative Code).
- l. National Fire Protection Code (NFPA) Standards (Title 675, Article 28 of the Indiana Administrative Code).
- m. In addition to requiring compliance with the above and foregoing codes, rules, and standards, the Building Commissioner shall require compliance with orders issued under Indiana Code §22-13-2-11, orders issued under Indiana Code §22-12-7, Indiana Code §22-15-3-7, and a written interpretation of a building law and fire safety law binding on the County under Indiana Code §22-13-5-3 or Indiana Code §22-13-5-4.

3. CONSTRUCTION REQUIREMENTS.

a. This Ordinance and the codes, rules, and standards adopted pursuant to this Ordinance shall apply to any and all construction which occurs after this Ordinance takes effect.

b. This Ordinance does not apply to an industrialized building system or mobile structure that is certified under Indiana Code §22-15-4.

c. This Ordinance does not apply to regulated amusement devices, boilers, lifting devices, or pressure vessels.

4. ADMINISTRATION. The Building Commissioner shall administer the terms and provisions of this Ordinance. The Building Commissioner shall be hired and named by the Director consistent with County personnel policies and procedures; provided, however, the Building Commissioner may be removed at the pleasure of the Commissioners. The classification, job description, and qualifications of the Building Commissioner shall be kept on file in the Elkhart County Office of Personnel and Insurance.

5. ENFORCEMENT. The Building Commissioner shall enforce the terms and provisions of this Ordinance. Whenever the Building Commissioner finds that a person has committed a prohibited act or failed to comply with any of the terms and provisions of this Ordinance, the Building Commissioner may take any one (1) or more of the following actions:

a. Right of Entry. Whenever necessary to make an inspection to enforce any of the provisions of this Ordinance, the Building Commissioner may enter any building or premises at all reasonable times to inspect them or to perform any duty imposed upon the Building Commissioner by this Ordinance.

If a building or premises is occupied, the Building Commissioner shall first present proper credentials and demand entry. If the building or premises is unoccupied, he or she shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and demand entry. If entry is refused, the Building Commissioner shall have recourse to every remedy provided by law to secure entry.

No owner or occupant or any other person having charge or control of any building or premises shall fail or neglect, after proper demand is made as provided in this Ordinance, to promptly permit entry in the building or premises by the Building Commissioner for the purpose of inspection and examination pursuant to this Ordinance.

b. Stop Work Order. Whenever any construction is being done contrary to the terms and provisions of this Ordinance, the Building Commissioner may order the construction stopped by written notice served on any persons engaged in or causing that work to be done, and all those persons shall immediately stop that construction until authorized by the Building Commissioner to proceed with the construction. As an additional part of the notice, the Building Commissioner shall post the stop work order in a prominent place on the building or project and shall serve a copy of the notice of the order to stop work by regular United States mail on the person holding or requesting the permit. The issuance of a stop work order shall in no way limit the operation of the civil penalty provisions provided elsewhere in this Ordinance.

c. Withhold Issuance of Permits. Whenever a person applies for a permit for a site, building, or structure that is not being used or constructed in conformance with the applicable provisions of this Ordinance or the Elkhart County Zoning Ordinance or any other County

Ordinance relating to land use, the Building Commissioner is authorized to withhold the issuance of requested permits until such time that the property is brought into compliance with applicable ordinances and codes. The withholding of the issuance of a permit shall in no way limit the operation of the civil penalty provisions provided elsewhere in this Ordinance.

d. Permit Revocation. The Building Commissioner may revoke a permit when any of the following are applicable:

i. The application, plans, or supporting documents contain a false statement or misrepresentation as to a material fact;

ii. The application, plans, or supporting documents reflect a lack of compliance with the building codes, rules, standards, or procedures;

iii. There is a failure to comply with this Ordinance; or

iv. A building or structure for which the permit has been issued is not being used or constructed in conformance with this Ordinance or the Elkhart County Zoning Ordinance or any other County Ordinance related to land use.

The revocation of a permit shall in no way limit the operation of the civil penalty provisions provided elsewhere in this Ordinance.

e. Agreed Order. The Building Commissioner, in the name of the Building Department, may enter into an agreed order with the approval of the Director which order may include the payment of a civil penalty and other expenses associated with the enforcement of this Ordinance by the Building Department.

f. Suit for Civil Penalties. The Building Commissioner, in the name of the Building Department, may file a complaint in a court of competent jurisdiction within Elkhart County seeking a judicial determination that this Ordinance has been violated and requesting the imposition of civil penalties.

g. Enforcement of Agreed Order. The Building Commissioner, in the name of the Building Department, may file a complaint in a court of competent jurisdiction within Elkhart County seeking to enforce the terms of an agreed order.

h. Injunctive Relief. The Building Commissioner, in the name of the Building Department, may petition a court of competent jurisdiction within Elkhart County for the issuance of a temporary restraining order or permanent injunction which restrains the violation of or requires specific compliance with this Ordinance or any codes, rules, standards, or procedures established pursuant to the terms of this Ordinance. Any such action for mandatory or injunctive relief may be joined with an action to recover the civil penalties provided for in this Ordinance.

i. Other Action. Nothing contained herein shall prevent the Building Commissioner from taking any other lawful action as is necessary to prevent or remedy any violation of this Ordinance.

6. PERMITS.

a. Building Permit. A building permit is a license to perform any work in accordance with the requirements of this Ordinance. All applications for permits to be issued by the County shall state the tax code number assigned by the Elkhart County Auditor to that parcel of real estate.

b. Requirements.

i. No building permit shall be issued by the Building Commissioner for a Class 1 structure unless and until a Construction Design Release has been issued by the State of Indiana.

ii. No person shall construct, reconstruct, extend, alter, repair, remodel or make an addition to any building or portion of a building, fireplace or chimney of any existing building, or perform any plumbing work, electrical work, heating work, ventilation work, air conditioning work, or other work for which this Ordinance establishes applicable codes, rules, or standards governing such work before a written application on the prescribed form to do so is submitted to and approved by the Building Commissioner and a permit is issued by him or her for the proposed work.

iii. Permit applications for Class 1 structures must be accompanied by the plans and prints in paper format or in electronic/digital PDF format; provided, however, the Building Commissioner may require submission in both paper format and in electronic/digital PDF format.

iv. Interior or exterior painting and routine maintenance or repairs which do not affect electric, plumbing, heating, ventilation, air conditioning, or structural stability are specifically exempted from the requirements of obtaining a permit under this section.

c. Permit Issuance. Before issuing any permit, the Building Commissioner may require the applicant to file a set of detailed plans and specifications, a copy of which may be retained in the office of the Building Commissioner. In the case of any commercial or industrial

building or structure, such set of detailed plans and specifications will be required to include a preliminary report or estimate from the Elkhart County Health Department Environmental Health Division, based upon a soil scientist's sample, setting forth the type of sewage disposal system most suitable for the proposed site. At the discretion of the Building Commissioner, a permit may be issued without all necessary sanitation, sewer, and/or septic tank permits issued by the Elkhart County Health Department Environmental Health Division to a commercial or industrial applicant who has received a positive or workable preliminary report from the Elkhart County Health Department Environmental Health Division. Any changes from the approved plans or specifications shall be made only after a revised copy of them has been submitted to and approved by the Building Commissioner.

Permits may not be issued to landowners who have real estate adjacent to subdivision streets which have not been opened or constructed in accordance with the Elkhart County Zoning Ordinance and the Elkhart County Subdivision Control Ordinance or who do not otherwise have legal access to the parcel of real estate.

d. Use and Occupancy. Irrespective of whether a permit has been issued, no building for which a permit is herein required shall be used or occupied by the owner or any other person (other than usage relative to completion of the work or construction at issue) unless and until the Building Commissioner has issued both an occupancy permit and a utility service hook-up authorization. No such occupancy permit or utility service hook-up authorization shall be issued by the Building Commissioner until all requirements of the permit process have been complied with, the work or construction contemplated has been carried out in accordance with the permit (and the

plans and specifications approved as a part thereof), the provisions of this Ordinance and any other laws and ordinances which are administered or enforced by the County have been satisfied, and the necessary formal sanitation, sewer, and septic tank permits relative to the building or structure (if any) have been issued by the Elkhart County Health Department Environmental Health Division and/or the Indiana State Board of Health as required by statute or regulation. After final inspection, when it is found that the building or structure complies with the provisions of this Ordinance and any other laws and ordinances which are administered or enforced by the County, the Building Commissioner shall issue a Certificate of Occupancy.

e. Term of Permits. Permits shall expire one (1) year after the date of issuance and shall be null and void if the construction has not reached final inspection within that one (1) year period; provided, however, extensions may be granted on residential permits for three (3) months and on commercial permits for six (6) months. At the conclusion of any extension granted, the permit shall then expire. Upon permit expiration, an extension or new permit is required. Construction thereafter, without an extension or a new permit, shall be considered a violation of this Ordinance and be subject to enforcement action.

7. FEES.

a. Schedule. When a permit is required, fees shall be levied in accordance with the schedule of fees identified in Elkhart County Ordinance 2013- 347 , as amended or replaced from time to time.

b. Refunds. The Building Commissioner may authorize the refunding of any fee paid hereunder which was erroneously paid or collected. The Building Commissioner may also

authorize the refunding of not more than eighty percent (80%) of a permit fee when no work has been done under a permit issued in accordance with this Ordinance. The Building Commissioner shall not authorize the refunding of any fee paid except upon written application filed by the original permittee not later than one hundred eighty (180) days after the date of the fee payment.

c. Local Government Exemption. All local governmental units shall be exempt from payment of the permit fees provided the local governmental unit furnishes a written statement to the Building Commissioner requesting that the fee be waived. Said statement shall specifically identify that the fee in question would be the responsibility of a local governmental unit and not the responsibility of a builder or contractor.

i. Nothing in this Section shall be deemed an elimination of the requirement for the issuance of a proper permit required under this Ordinance.

ii. Nothing in this Section shall be construed to eliminate the right of the Building Commissioner to conduct on-site inspections of any work taking place pursuant to any permit.

iii. If a local governmental unit fails to secure any permit required by this Ordinance, then the unit shall be subject to any and all actions, proceedings, or assessments permissible against any other entity failing to secure a proper permit.

8. INSPECTIONS. It shall be the duty of the person doing the work authorized by a permit to notify the Building Commissioner that such work is ready for inspection. It shall be the duty of the owner, contractor, or person requesting any inspections required by this section to provide a safe and unobstructed access into the structure with no special arrangements or

appointments required. No ramps or ladders shall be permitted; temporary steps at a minimum must be provided into a structure. No work shall be done on any part of a building or structure or other project beyond the point indicated in each successive inspection without first obtaining the approval of the Building Commissioner. Inspections are required in succession for the following construction categories:

<u>Construction</u>	<u>Required Inspections</u>
Structures	Footing Foundation Framing Final
Plumbing	Underground Rough in Final
Mechanical	Gas service Rough in (Chimney/duct work) Final
Electrical	Temporary Service Permanent and rough in service Final
Energy (Pre-Drywall)	Mechanical Plumbing Insulation

9. RIGHT OF APPEAL. Any person aggrieved by an order issued under this Ordinance shall have the right to petition for review of any order of the Building Commissioner. Such a person may file a petition using either, or both, of the following procedures:

- a. Appeal to the Fire Prevention and Building Safety Commission.

i. A person aggrieved by an order issued under this Ordinance may appeal to the Fire Prevention and Building Safety Commission in accordance with Indiana Code § 22-13-2-7.

ii. The Fire Prevention and Building Safety Commission may modify or reverse any order issued by the County that covers a subject governed by Indiana Code § 22-12, Indiana Code § 22-13, Indiana Code § 22-14, Indiana Code § 22-15, a fire safety, or a building rule.

iii. The Fire Prevention and Building Safety Commission must review orders that concern a Class 2 structure if the person aggrieved by the order petitions for review under Indiana Code § 4-21.5-3-7 within thirty (30) days after the issuance of the order.

iv. The Fire Prevention and Building Safety Commission may review all other orders issued under this Ordinance.

v. The review of an order by the Fire Prevention and Building Safety Commission does not suspend the running of the time period under any statute in which a person must petition a court for judicial review of the order.

b. Appeal to a Court.

i. Pursuant to Indiana Code § 36-7-8-9, a person aggrieved by a decision of the Building Department may appeal as in other civil actions to a court for judicial review.

ii. To appeal, the appellant must, by registered mail, give the Commissioners a fifteen (15) day written notice of his or her intention to appeal. The notice must concisely state the appellant's grievance.

10. PENALTY PROVISIONS.

a. Fines. Any person found to be in violation of this Ordinance shall be guilty of an ordinance violation and shall be subject to a civil penalty of up to Two Thousand Five Hundred Dollars (\$2,500.00) for each violation. Each day that a violation continues shall constitute a separate violation. Any failure to comply with any of the terms and provisions of this Ordinance shall constitute a violation. The assessment of a civil penalty shall in no way limit the operation of any other enforcement remedies provided elsewhere in this Ordinance.

b. Additional Recovery. The Building Department may recover reasonable attorney fees, court costs, and other expenses associated with the enforcement of this Ordinance from any person found to be in violation of this Ordinance.

11. AUTHORITY OF BUILDING COMMISSIONER. It is hereby acknowledged, understood, and declared by the Commissioners that the Building Commissioner is required to exercise and is vested with the authority to exercise his or her discretion and judgment in order to protect and preserve the public health, safety, and general welfare of the citizens of Elkhart County, Indiana in administering this Ordinance. The authority of the Building Commissioner to issue, deny, suspend, or revoke, or fail or refuse to issue, deny, suspend, or revoke any permit, license, approval, order, or similar authorization under this Ordinance is hereby declared to be discretionary; provided, however, the Building Commissioner has no discretionary authority to waive, vary, or alter the requirements of any Indiana building law.

12. CONSTRUCTION AND EFFECTIVE DATE.

a. All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed upon the effectiveness of this Ordinance. This Ordinance shall become effective from and after the date on which both of the following have occurred:

(i) This Ordinance has been duly adopted by the Commissioners and published in accordance with the requirements of applicable Indiana law; and

(ii) The Fire Prevention and Building Safety Commission of Indiana has approved of this Ordinance as required by Indiana Code § 36-3-4-14.

b. In the event that any provision of this Ordinance is determined by a court of competent jurisdiction to be preempted by a state or federal law or regulation, the applicable provision shall automatically be deemed amended by eliminating the preempted provision and incorporating in its place the applicable provision of the preempting state or federal law or regulation.

c. Each section of this Ordinance shall be construed as separate. If any term or provision of this Ordinance is determined to be invalid or enforceable by a court of competent jurisdiction, the remaining terms and provisions of this Ordinance shall continue in full force and effect.

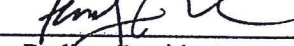
d. Compliance with the requirements of this Ordinance does not obviate or eliminate the necessity of complying with any other applicable federal, state, or local law and regulation affecting agricultural, residential, commercial, or industrial buildings, structures, or premises in Elkhart County, Indiana.

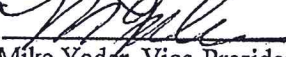
e. The expressed repeal by this Ordinance and any implied repeal by this Ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this Ordinance. These rights, liabilities, and other proceedings are continued and penalties shall be imposed and enforced under the repealed ordinance as if this Ordinance had not been adopted.


f. Two (2) copies of the codes, rules, and standards adopted and incorporated by reference in Section Two (2) of this Ordinance are on file in the Elkhart County Auditor's Office for public inspection.

ORDAINED AND ADOPTED this 5th day of August, 2013.

BOARD OF COMMISSIONERS OF THE
COUNTY OF ELKHART, INDIANA

By: 
Terry Rodino, President

By: 
Mike Yoder, Vice-President

By: 
Frank Lucchese, Member

ATTEST:


Pauline E. Graff, Elkhart County Auditor

Approved this day, _____, 2013, by the Fire Prevention and Building Safety Commission of the State of Indiana.

STATE OF INDIANA FIRE PREVENTION AND
BUILDING SAFETY COMMISSION

By: _____

Title: _____