

SOUTH WHITLEY BUILDING ORDINANCE

An ORDINANCE Regulating the Construction, Alteration, Equipment, Use, Occupancy and Location of Buildings and Structures in South Whitley, Indiana; incorporating by reference building rules, codes and standards required to be enforced under IC 36-7-2-9; providing for the issuance of permits; inspections, and penalties for violations. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

BE IT ORDAINED by the Town Council of South Whitley, Whitley County, Indiana as follows:

ARTICLE I. GENERAL REQUIREMENTS

SECTION 1. TITLE. This ordinance and all material included herein by reference shall be known as the Building Code of South Whitley, Indiana.

SECTION 2. PURPOSE. The purpose of this ordinance is to protect the life, public safety, health and general welfare of the citizens of South Whitley, Indiana, and shall be construed in such a manner to effectuate this purpose.

SECTION 3. DEFINITIONS. Unless otherwise clearly indicated by its context, the words and terms defined in this section shall have the specified meanings.

1. “Building Commissioner”, as used in this ordinance, includes individuals employed by the Building Department that are authorized to represent the Building Commissioner.
2. “Class 1 Structure”, pursuant to IC 22-12-1-4 has the following definition:
 - (A) “Class 1 structure” means any part of the following:
 - (1) A building or structure that is intended to be or is occupied or otherwise used in any part by any of the following:
 - (a) The public
 - (b) Three (3) or more tenants
 - (c) One (1) or more persons who act as the employees of another.
 - (2) A site improvement affecting access by persons with physical disabilities to a building or structure described in subdivision (1).
 - (3) Any class of buildings or structures that the commission determines by rules to affect a building or structure described in subdivision (1), except buildings or structures described in subsections (c) and (f).
 - (B) Subsection (a)(1) includes a structure that contains three (3) or more condominium units (as defined in IC 32-25-2-9) or other units that:

- (1) are intended to be or are used or leased by the owner of the unit; and
 - (2) are not completely separated from each other by an unimproved space.
- (C) Subsection (a)(1) does not include a building or structure that:
- (1) is intended to be or is used only for an agricultural purpose on the land where it is located; and
 - (2) is not used for retail trade or is a stand used for retail sales of farm produce for eight (8) or less consecutive months in a calendar year.
- (D) Subsection (a) (1) does not include a Class 2 structure.
- (E) Subsection (a) (1) does not include a vehicular bridge.
- (F) Subsection (a)(1) does not include a structure that is intended to be or is occupied solely to provide periodic maintenance or repair of:
- (1) the structure, or
 - (2) mechanical or electrical equipment located within and affixed to the structure.
- (G) Pursuant to IC 22-12-1-24, structure includes swimming pool.
3. “Class 2 Structure”, pursuant to IC 22-12-1-5 has the following definition:
- (A) “Class 2 structure” means any part of the following:
- (1) A building or structure that is intended to contain or contains only one (1) dwelling unit or two (2) dwelling units unless any part of the building or structure is regularly used as a Class 1 structure.
 - (2) An outbuilding for a structure described in subsection (1), such as a garage, barn, or family swimming pool, unless any part of the outbuilding is regularly used as a Class 1 structure.
- (B) Subsection (A) does not include a vehicular bridge.
- (C) Pursuant to IC 22-12-1-24, structure includes swimming pool.
4. “Construction”, pursuant to IC 22-12-1-7, means any of the following:
- (A) Fabrication of any part of an industrialized building system or mobile structure for use at another site.
 - (B) Erection or assembly of any part of a Class 1 or Class 2 structure at the site where it will be used.
 - (C) Installation of any part of the permanent heating, ventilating, air conditioning, electrical, plumbing, sanitary, emergency detection, emergency communication, or fire or explosion suppression systems for a Class 1 or Class 2 structure at the site where it will be used.
 - (D) Work undertaken to alter, remodel, rehabilitate, or add to any part of a Class 1 or Class 2 structure.
 - (E) Work undertaken to relocate any part of a Class 1 or Class 2 structure, except a mobile structure.

5. “Industrialized building system”, pursuant to IC 22-12-1-14, means any part of a building or structure that is in whole or in substantial part fabricated in an off-site manufacturing facility for installation or assembly at the building site as part of a Class 1 structure, a Class 2 structure, or another building or structure. However, the term does not include a mobile structure or a system that is capable of inspection at the building site.
6. “Manufactured home”, pursuant to IC 22-12-1-16 has the meaning set forth in 42 U.S.C. 5402 as it existed on January 1, 2003. This definition is as follows: “Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under this 42 U.S.C. 5401 et seq. and except that such term shall not include any self-propelled recreational vehicle.
7. “Mobile structure”, pursuant to IC 22-12-1-17, has the following definition:
 - (A) “Mobile structure”, means any part of a fabricated unit that is designed to be:
 - (1) towed in its own chassis; and
 - (2) connected to utilities for year-round occupancy or use as a Class 1 structure, a Class 2 structure, or another structure.
 - (B) The term includes the following:
 - (1) Two (2) or more components that can be retracted for towing purposes and subsequently expanded for additional capacity.
 - (2) Two (2) or more units that are separately tow able but designed to be joined into one (1) integral unit.
8. “Person”, pursuant to IC 22-12-1-18, means an individual, corporation, limited liability company, partnership, unincorporated association, or governmental entity.
9. “Structure” means both Class 1 and Class 2 structures, unless specifically stated otherwise.
10. “Vehicular bridge”, pursuant to IC 22-12-1-26, means any bridge that is neither:
 - (A) a pedestrian walkway; nor
 - (B) a passageway for light vehicles;

suspended between (2) or more parts of a building or between two (2) or more buildings.

SECTION 4. SCOPE.

1. All construction shall be accomplished in compliance with the provisions of this Building Ordinance.
2. Pursuant to IC 22-13-2-6, this Building Ordinance shall not apply to industrialized building systems or mobile structures certified under IC-22-15-4; however, the provisions of this Building Ordinance and the rules promulgated by the Fire Prevention and Building Safety Commission do apply to any construction related to an industrialized building system or mobile structure not certified under IC 22-15-4.
3. Pursuant to IC 22-13-2-9, this Building Ordinance is not applicable to regulated amusement devices, regulated boilers, regulated pressure vessels, or regulated lifting devices.

SECTION 5. AUTHORITY. The Building Commissioner is hereby authorized and directed to administer and enforce the following:

1. All provisions of this Building Ordinance.
2. Variances granted in accordance with IC 22-13-2-11.
3. Orders issued under IC 22-12-7.

SECTION 6. SEVERABILITY. Should any provision (section, clause, phrase, word, or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions be given the effect intended in adopting this ordinance. To this end, the provisions of this ordinance are severable.

SECTION 7. EFFECT OF ADOPTION ON PRIOR ORDINANCE. The expressed or implied repeal of amendment 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 or amended ordinance as if this ordinance had not been adopted.

ARTICLE II. BUILDING PERMITS

SECTION 8. BUILDING PERMIT REQUIRED. Construction is prohibited unless in conformity with a valid building permit obtained from the Building Commissioner prior to commencement of construction.

SECTION 9. APPLICATION FOR BUILDING PERMIT.

1. Any person required to have a building permit shall submit a complete application to the Building Commissioner.
2. This application shall be submitted on a form prepared by the Building Commissioner, and shall contain the following:
 - (A) Information that the Building Commissioner determines to be necessary to locate and contact the applicant.
 - (B) A clear and understandable copy of detailed plans and specifications drawn to scale which indicate in a precise manner the nature and location of all work to be accomplished.
 - (C) A plot plan drawn to scale shall reflect the location of the proposed structure or addition in relation to existing structures, property lines, roads, streets, curbs, sidewalks, easements, wells and septic systems. A plot plan will not be required when the construction will occur entirely within an existing structure.
 - (D) If required by Indiana law or any rule of the Fire Prevention and Building Safety Commission, a copy of a Design Release for the work to be done that has been issued by the State Building Commissioner and the State Fire Marshal pursuant to IC 22-15-3.
 - (E) Any additional information that the Building Commissioner finds to be necessary to determine that the construction will conform to all applicable building laws and will not violate any other applicable ordinances or laws.
 - (F) The fee established by Appendix A.
3. Application for a building permit shall be made by the person entitled to obtain the permit or by an employee or agent of that person. The Building Commissioner may require that such an employee or agent provide written authority to apply for a permit.

SECTION 10. ISSUANCE OF BUILDING PERMIT. The Building Commissioner shall issue a building permit to a person after the person has submitted a complete application, including any applicable fee, provided that the proposed construction will conform to all applicable building laws and will not violate any other applicable ordinances or laws.

SECTION 11. CERTIFICATE OF OCCUPANCY. No certificate of occupancy for any newly constructed building or structure shall be issued unless such building or structure was constructed in compliance with the provisions of this Building Ordinance. It shall be unlawful to occupy any such building or structure unless a full, partial, or temporary certificate of occupancy has been issued by the Building Commissioner.

ARTICLE III. INVESTIGATIONS AND INSPECTIONS OF CONSTRUCTION ACTIVITIES

SECTION 12. GENERAL AUTHORITY TO MAKE INSPECTIONS AND INVESTIGATIONS .

1. All construction shall be subject to periodic inspections by the Building Commissioner irrespective of whether a building permit has been or is required to be obtained.
2. The Building Commissioner may at any reasonable time go in, upon, around or about the premises where any structure subject to the provisions of this Building Ordinance or to the rules of the Fire Prevention and Building Safety Commission is located for the purposes of inspection and investigation of such structure. Such inspection and investigation may be made before and/or after construction on the project is completed for the purposes of determining whether the structure meets building standards and procedures, and ascertaining whether the construction and procedures have been accomplished in a manner consistent with this Building Ordinance and the rules of the Fire Prevention and Building Safety Commission.

SECTION 13. INSPECTIONS BY FIRE DEPARTMENT. The Building Commissioner and the Fire Department shall work cooperatively to conduct inspections and investigations to promote compliance with fire safety laws (The Fire Department has independent authority to conduct inspections and take enforcement actions under IC 36-8-17).

ARTICLE IV. ENFORCEMENT AND PENALTIES

SECTION 14. WITHHOLD ISSUANCE OF PERMITS.

1. Whenever a person which is either an applicant for a building permit or an obtainer of a building permit owes fees (including checks returned for insufficient funds, permit fees owed pursuant to Appendix A, or inspection fees owed pursuant to Appendix A) to the Building Commissioner, the Building Commissioner may withhold the issuance of subsequently requested permits until such time that the debt is satisfied.
2. Whenever a person applies for a building permit for a structure that will not be in conformance with applicable provisions of an applicable zoning ordinance

or other 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 conformance with applicable ordinances.

SECTION 15. PERMIT REVOCATION. The Building Commissioner may revoke a building permit when any of the following are applicable:

1. The application, plans or supporting documents contain a false statement or misrepresentation as to a material fact.
2. The application, plans or supporting documents reflect a lack of compliance with building standards and procedures.
3. There is failure to comply with the Building Ordinance.
4. The structure for which the building permit has been issued is not being used or constructed in conformance with an applicable zoning ordinance or other ordinance relating to land use.

SECTION 16. STOP-WORK ORDER.

1. The Building Commissioner may issue an order requiring suspension of the pertinent construction (stop-work order) in accordance with this section.
2. The stop work order shall:
 - (A) Be in writing.
 - (B) State with specificity the construction to which it is applicable and the reason for its issuance.
 - (C) Be posted on the property in a conspicuous place.
 - (D) If practicable, be given to:
 - (1) The person doing the construction; and
 - (2) To the owner of the property or the owner's agent.
 - (E) The stop-work order shall state the conditions under which construction may be resumed.
3. The Building Commissioner may issue a stop-work order if:
 - (a) Construction is proceeding in an unsafe manner, including, but not limited to, in violation of any standard set forth in this Building Ordinance or any state law pertaining to safety during construction.
 - (b) Construction is occurring in violation of this Building Ordinance or in such a manner that if construction is allowed to proceed, there is a reasonable probability that it will be substantially difficult to correct the violation.
 - (c) Construction for which a building permit is required is proceeding without a building permit being in force.

4. The issuance of a stop-work order shall in no way limit the operation of penalties provided elsewhere in this Building Ordinance.

SECTION 17. CIVIL ACTION. Pursuant to IC 36-1-6-4, the Town may initiate a civil action in a court of competent jurisdiction to restrain any person from violating a provision of this Building Ordinance.

SECTION 18. MONETARY PENALTY. Any person violating any provision of this Building Ordinance may be subject to a fine in any sum not exceeding two thousand five hundred dollars (\$2,500). The assessment of a monetary penalty shall in no way limit the operation of the penalties provided elsewhere in this Building Ordinance.

SECTION 19. RIGHT OF APPEAL. Any person aggrieved by an order issued under this Building 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:

1. Appeal to the Fire Prevention and Building Safety Commission.
 - (A) A person aggrieved by an order issued under this Building Ordinance may appeal to the Fire Prevention and Building Safety Commission, in accordance with IC 22-13-2-7.
 - (B) The Commission may modify or reverse any order issued by the Town that covers a subject governed by IC 22-12, IC 22-13, IC 22-14, IC 22-15, a fire safety, or a building rule.
 - (C) 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 IC 4-21.5-3-7 within thirty (30) days after the issuance of the order.
 - (D) The Fire Prevention and Building Safety Commission may review all other orders issued under this Building Ordinance.
 - (E) 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.
2. Appeal to an Established Local Administrative Body or Court.

If pursuant to IC 36-1-6-9, the City has established by ordinance to hear appeals of orders issued under ordinances, then a person approved by an order may petition for review with this administrative body in accordance with said ordinance. If no such administrative body exists, then the person may petition a court for judicial review of the order.

ARTICLE IV. ENFORCEMENT AND PENALTIES

SECTION 20. ADOPTION OF RULES BY REFERENCE.

1. Pursuant to IC 22-13-2-3(b), the rules of the Indiana Fire Prevention and Building Safety Commission as set out in the following Articles of Title 675 of the Indiana Administrative Code are hereby incorporated by reference in this code and shall include any later amendments to those rules.
 - (A) Article 13 – Building Codes
 - (1) Fire and Building Safety Standards.
 - (2) Indiana Building Code.
 - (B) Article 14 – Indiana Residential Code
 - (C) Article 16 – Indiana Plumbing Code
 - (D) Article 17 – Indiana Electrical Code
 - (E) Article 18 – Indiana Mechanical Code
 - (F) Article 19 – Indiana Energy Conservation Code
 - (G) Article 20 – Indiana Swimming Pool Code
 - (H) Article 22 – Indiana Fire Code
 - (I) Article 24 – Migrant Day Care Nursery Fire Safety Code
 - (J) Article 25 – Indiana Fuel Gas Code
2. Two (2) copies of the above building rules incorporated by reference are on file in the office of the clerk for the legislative body for public inspection as required by 36-1-5-4.
3. The Building Commissioner and the Fire Prevention and Building Safety Commission may grant a variance to the fire safety laws and building laws adopted in this Building Ordinance. Pursuant to IC 22-13-2-7 (b), a variance granted by the Building Commissioner is not effective until it has been approved by Fire Prevention and Building Safety Commission.

SECTION 21. LIFTING DEVICES LOCATED WITHIN A PRIVATE RESIDENCE.

1. Pursuant to IC 22-12-1-22 (b) (12), lifting devices, such as elevators and wheelchair lifts, located within a private residence are not regulated lifting devices. Therefore, the following standards applicable to lifting devices located within a private residence are incorporated by reference:
 - (A) Part 5.3, Private Residence Elevators, ANSI/ASME A17.1-2000, Safety Code for Elevators and Escalators published by the American Society of Mechanical Engineers, Three Park Avenue, New York, New York, 10016.
 - (B) Part 5.4, Private Residence Inclined Elevators, ANSI/ASME A17.1-2000, Safety Code for Elevators and Escalators published by the American Society of Mechanical Engineers, Three Park Avenue, New York, New York, 10016.

- (C) Section 5, Private Residence Vertical Platform Lifts, ASME A18.1a, 2001 (Addenda to ASME 18.1-1999), Safety Standard for Platform and Stairway Chair Lifts, published by the American Society of Mechanical Engineers, Three Park Avenue, New York, New York, 10016.
- (D) Section 6, Private Residence Inclined Platform Lifts, ASME A18.1a, 2001 (Addenda To ASME 18.1-1999), Safety Standard for Platform and Stairway Chair Lifts, published by the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016.
- (E) Section 7, Private Inclined Stairway Lifts, ASME A18.1a, 2001 (Addenda to ASME 18.1-1999), Safety Standard for Platform and Stairway Chair Lifts, published by the American Society of Mechanical Engineers, Three Park Avenue, New York, New York, 10016.

- 2. Two (2) copies of the above lifting device standards incorporated by reference are on file in the office of the clerk for the legislative body for public inspection as required by IC 36-1-5-4.

ARTICLE VI. EFFECTIVE DATE

SECTION 22. EFFECTIVE DATE. This Building Ordinance shall be in full force and effect from and after the date on which both of the following have occurred:

- 1. The Town Council of South Whitley has adopted this ordinance.
- 2. The Fire Prevention and Building Safety Commission of Indiana has approved of this ordinance as required by IC 22-13-2-5.

(Authentication of enactment according to local style.)

Approved this _____ day of _____, 20____, by the Fire Prevention and Building Safety Commission of the State of Indiana.

Chair of Commission

Approved this _____ day of _____, 20 ____, by the Town Council of South Whitley.

ATTEST:

Clerk Treasurer