INSTITUTE FOR JUSTICE

January 22, 2019

via electronic mail
-DJB

VIA ELECTRONIC MAIL
Fire Prevention and Building Safety Commissioner
C/o Mr. Douglas Boyle, Executive Director
Indiana Department of Homeland Security
302 W. Washington St., Room 241
Indianapolis, Indiana 46204
Email: doboyle@dhs.in.gov

RE: Consideration of City of Charlestown Property Maintenance Code.

Dear Commissioners of the Fire Prevention and Building Safety Commission:

This letter concerns the City of Charlestown's request to have the Commission approve its recently adopted property maintenance code, 2018-OR-23. I am an attorney with the Institute for Justice, a non-profit law firm that represents property owners free of charge in various cases across the country. We represent a group of homeowners and landlords in Charlestown's Pleasant Ridge neighborhood who have sued to prevent the City from using abusive fines to force them to sell their properties to a private developer.

The City has amended its code to authorize immediate, daily-accumulating fines on property owners without any reasonable opportunity to correct the alleged deficiency before fines are imposed. This was made alongside a separate 2018 ordinance repealing the city's adherence to the Indiana Unsafe Building Law. The city has taken these two steps because Indiana trial and appellate courts have ruled that the city violated its prior property maintenance code and the Unsafe Building Law in imposing illegal fines on property owners in 2016. The trial court determined that the purpose of these illegal fines was to coerce the sale of property to a private developer, who, because of this scheme, was able to acquire over 100 properties in a matter of months. In short, the City's response to court rulings about the illegal fining scheme has been to repeal the laws the city violated. The obvious purpose is to be able to allow the city to continue coercing sales to the developer (which, the court also found to be a separate constitutional violation).

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The Commission may remember that two of my clients and I testified at the August 7, 2018 meeting when the City's last property maintenance code, 2018-OR-06 was before you. At your next meeting you denied that ordinance on a number of grounds. The City then amended the ordinance. In its correspondence of December 4, 2018, the City has now told you that the latest version responds to what you found wrong with the ordinance before, and that it should now be approved.

We ask you to deny this version as well because the City is still trying to use the ordinance for illicit ends and has amended it to further those ends: **to allow it to issue immediate fines which will force people to sell to a private developer.**

The following brings this Commission up to date on our lawsuit and how it can deny approval of the ordinance, thus protecting the property owners of Charlestown from unconscionable redevelopment tactics.

The Lawsuit to Prevent Illegal Fines.

First a bit of background about our lawsuit, case number 10C02-1701-CT-010. Scott County Judge Jason Mount, siting as a special judge in Clark County, issued a preliminary injunction in the case on December 4, 2017, prohibiting the City from issuing fines against low-income homeowners unless the city enforced the property maintenance code evenhandedly against the developer as well. The trial court found it likely that the city violated its property maintenance code, and the U.S. and Indiana Constitutions. The trial court did not believe that the Unsafe Building Law controlled. We are including the injunction with this letter (hereinafter "Injunction").

On appeal, in a September 10, 2018, decision, the City lost on the Unsafe Building Law issue and the Court of Appeals did not otherwise question Judge Mount's legal conclusions or factual findings.[1] This means that the City lost on all four issues before the courts, which collectively ruled that the City likely violated its property maintenance code, the Unsafe Building Law, and the U.S. and Indiana Constitutions.

We are now waiting for the trial court to reinstate the preliminary injunction and set the case for trial. However, as often is the case, the wheels of justice have turned slowly, and we do not yet have a court date for a new preliminary injunction or a final ruling. Further, since the rulings of Judge Mount and, now, the Court of

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[1] The Court of Appeals vacated the preliminary injunction only so that the trial court could refashion it with proper consideration for the Unsafe Building Law issue. A copy of the Court of Appeal's opinion is also included with this letter.

Appeals, the City has taken two unprecedented and extraordinary actions. First, in February 2018, it amended the property maintenance code to explicitly allow for it to fine property owners immediately, with no reasonable period in which to comply with a citation. Second, in December 2018, it repealed the City's adoption of the Unsafe Building Law, arguably rendering the Court of Appeal's decision moot. These actions are directly aimed at fining our clients and their neighbors so that they will sell to a private developer.

In ruling that the City must obey the Unsafe Building Law, the Court of Appeals probably did not imagine that the City of Charlestown would repeal its adherence to this statute that it had agreed to be bound to years ago, and that many municipalities in Indiana also adhere to, just so it can issue immediately accruing fines to property owners of very modest means. Yet, that is exactly what the City had done. That action speaks volumes for the City's narrow-minded purpose in its quest to push the poor out of the Pleasant Ridge neighborhood and replace them with the high-priced homes its developer wishes to build.

The Commission Can Stop the City's Illegal Tactics.

And that brings us to what the Commission can do. The City has told us that once this Commission approves the City's new property maintenance code, it will recommence inspections in the Pleasant Ridge neighborhood. As evidenced by its previous actions, outlined below, that will result in immediate fines designed to force people to sell their properties. We may not be able to obtain a new injunction in time to prevent that. However, by denying approval of the ordinance this Commission can stop the City from pursuing that goal.

How the City of Charlestown Has Used Fines to Force Property Owners to Sell for $10,000 Per Home.

As Judge Mount's December 2017 opinion details—again, which the Court of Appeals did not disagree with—the City began using the former property maintenance code, 2008-OR-01, in the second half of 2016 as part of a plan to redevelop the Pleasant Ridge neighborhood, where our clients live. Injunction, p. 8-9. The City has inspected rental property, and has publicly stated it also intends to inspect owner-occupied property. Injunction, p. 15. The City began issuing massive, daily accruing fines against Pleasant Ridge properties for code violations, often minor ones, with every day constituting a separate violation. Landlords quickly found themselves facing thousands of dollars, or even tens of thousands of dollars, in fines. The City refused to waive fines even if the properties were repaired. However, the City *would* waive fines if the properties were sold to an LLC owned by a wealthy developer, John Neace. Injunction, p.9. Neace offered a mere $10,000 per home, even though the tax assessed value of the homes was often more than three

times that. In fact, one of our clients, Ann Eldridge, purchased her properties in 2015 for more than $60,000 each. Faced with this no-win situation, many landlords sold to the developer.

The illegitimate nature of these fines is evident in how the City used them against our nonprofit client Pleasant Ridge Neighborhood Association, which bought and rehabilitated a Pleasant Ridge home as a low-income rental property. The city inspected the exterior and interior, identified various infractions, and imposed immediate, daily-accumulating fines. Even though the Association immediately addressed the issues in good faith and had no history of violating the property maintenance code, the city refused to reduce the approximately $9,000 fine by even one penny. Even worse, in response to our client's request for the fines to be waived, the city promulgated a new policy against waiving any fines ever. The purpose, of course, was to put the Association—a barebones nonprofit trying to protect low-income residents and provide them with affordable housing—in the untenable position of paying the city $9,000 or sell to the developer for $10,000.

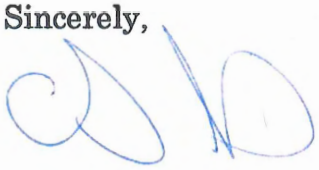
Judge Mount granted the preliminary injunction because the City's scheme likely violates our clients' constitutional rights. Injunction, pp. 23-30. In addition, and directly relevant to the new ordinance, the Judge also ruled that the City's former ordinance did not authorize the immediate, daily accruing fines that the City had issued. Injunction, pp. 20-23.

In response to the ruling, in February of last year the City amended its property maintenance code with ordinance 2018-OR-06, to allow for it to fine property owners without any prior notice. *See* 2018-OR-06, §§ 106.4, 106.5. **It is this language that we are asking you to consider today, and to find unlawful.** In September 2018 this Commission denied approval of ordinance 2018-OR-06 because of other conflicts it had with state law, including use of the international code instead of the state code. It has now amended the ordinance again, purportedly in response to your denial, but it has kept the language allowing for immediate fines. 2018-OR-23, §§ 106.4, 106.5.

The Commission should deny the City's request. Immediate fines go beyond what your model building codes allow for, and allow the City to target property owners for reasons other than protecting public safety. In the City's tactics, the difference between having a reasonable time of as little as 10 days to respond to a citation before fines begin to accrue, and having those fine begin immediately, can make the difference in whether a good faith property owner is able to fix their property and keep it, or have no choice but to sell to the developer (who, again, will *not* have to pay the fines, under the City's policy; instead they are waived). Notice and a reasonable opportunity to correct are not only standard practice; they are critically important for homeowners and landlords. If the Commission allows the

City to issue immediate fines, it will enable the City to continue its illegal efforts to force property owners to sell to a politically favored developer. The Commission has the power to stop this scheme. We encourage you to review the attached legal opinions, the proposed ordinance's conflict with state law, and not approve the new ordinance.

Sincerely,



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IN THE
COURT OF APPEALS OF INDIANA

City of Charlestown, Indiana, and Charlestown Board of Public Works and Safety,

Appellants-Defendants/Cross-Appellees,

v.

Charlestown Pleasant Ridge Neighborhood Association Corporation, Joshua Craven,

September 10, 2018

Court of Appeals Case No. 10A01-1712-CT-2896

Appeal from the Clark Circuit Court

The Honorable Jason M. Mount, Special Judge

Trial Court Cause No. 10C02-1701-CT-10

Tina Barnes, David and Ellen Keith, and Bolder Properties, LLC,

Appellees-Plaintiffs/Cross-Appellants

Crone, Judge.

Case Summary

[1] Charlestown Pleasant Ridge Neighborhood Association Corporation, Joshua Craven, Tina Barnes, David Keith, Ellen Keith, and Bolder Properties, LLC (collectively "the Homeowners"), filed a motion for preliminary injunction against the City of Charlestown, Indiana, and the Charlestown Board of Public Works and Safety (collectively "the City") with respect to the City's practice of enforcing its Property Maintenance Code ("PMC"). In support of their motion for a preliminary injunction, the Homeowners alleged that the City enforced the PMC in a manner that violated (1) Indiana Code Chapter 36-7-9, also known as the Indiana Unsafe Building Law ("UBL"), (2) the PMC itself, (3) the United States Constitution's Equal Protection Clause, and (4) the Indiana Constitution's Privileges and Immunities Clause. As to the first claim, the trial court found that the City is not required to follow either the UBL or the PMC exclusively. Because the trial court found that the City is not required to follow the UBL, the trial court concluded that the Homeowners are unlikely to succeed on their claim that the City's manner of enforcing the PMC violates the UBL. However, the trial court also concluded that the Homeowners are likely

to succeed on their remaining claims. Accordingly, the trial court issued findings of fact and conclusions thereon ("the Appealed Order") and a separate order granting the preliminary injunction.[1]

[2] The City appeals, arguing that the trial court clearly erred in concluding that the Homeowners are likely to succeed on their claims that the City's manner of enforcing the PMC violates the PMC, the Equal Protection Clause, and the Privileges and Immunities Clause. The Homeowners cross-appeal, arguing that the trial court clearly erred in concluding that they are unlikely to succeed on their claim that the City's manner of enforcing the PMC violates the UBL.

[3] The issue raised in the Homeowners' cross-appeal is dispositive at this stage of the proceedings. As to that issue, we conclude that the trial court clearly erred in finding that the City is not required to follow the UBL. Specifically, we conclude that because the City has adopted the UBL, the City is required to act in accordance with its provisions. That does not mean that the PMC is without legal force, but rather that the City is precluded from enforcing the PMC in a manner that is inconsistent with the UBL. Because the trial court found that the City was not required to follow the UBL, the trial court did not address how the UBL impacts the City's enforcement of the PMC. Some of the provisions in the UBL are permissive, others are mandatory. Some provisions of the PMC

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[1] Because the trial court's findings of fact and conclusions thereon set forth the terms of the preliminary injunction, thereby duplicating the trial court's separate order granting the preliminary injunction, for simplicity's sake, we generally refer to the trial court's findings of fact and conclusions thereon as the Appealed Order.

may conflict with the UBL, some PMC provisions will be compatible with the UBL, and many PMC provisions will address subject matter not covered by the UBL. Therefore, we remand for the trial court to consider how the UBL and the PMC work together in light of our conclusion that the PMC must work within the confines and strictures of the UBL, and to reconsider the Homeowners' claim that the City's enforcement of the PMC violates the UBL. Further, because the trial court decided the Homeowners' remaining three claims based on the erroneous premise that the City was not required to follow the UBL, those claims, if the Homeowners choose to pursue them, will need to be reexamined. Accordingly, we reverse the Appealed Order and the order granting the preliminary injunction and remand for further proceedings consistent with this opinion.

Facts and Procedural History

[4] The undisputed facts show that Pleasant Ridge is a neighborhood within the City of Charlestown.[2] Appealed Order at 3 (finding #8). The City believes that Pleasant Ridge needs redevelopment. *Id.* at 4 (#13). The Association is a nonprofit corporation with approximately fifty members, all of whom are Pleasant Ridge property owners, and the Association itself owns and rents a duplex in Pleasant Ridge. *Id.* at 2 (#1). Joshua Craven, Tina Barnes, David

[2] In its appellants' brief, the City states that it contests many of the facts found in the Appealed Order, but they do not challenge the facts presented here. Appellants' Br. at 10 n.1. We observe that the City includes evidence in its statement of facts that is not incorporated in the trial court's findings of fact. Because our standard of review requires us to consider only the evidence most favorable to the judgment, we ignore the evidence that is irrelevant to or that does not support the trial court's findings.

Keith, and Ellen Keith are Pleasant Ridge residents and homeowners. *Id*. (#2-4). Craven is the president of the Association. Barnes is a member of the Charlestown City Council ("the City Council").[3] Bolder Properties owns four duplexes in Pleasant Ridge. *Id*. (#5).

[5] In 2001, the City Council passed an ordinance adopting the UBL pursuant to Indiana Code Section 36-7-9-3. *Id*. at 19 (#85).[4] The UBL provides local governments with procedures to address unsafe buildings and premises but does not set forth specific building safety standards. The UBL defines an "unsafe building" in relevant part as one that is "dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance." Ind. Code § 36-7-9-4. An "unsafe premises" is an unsafe building and the property it is located on. *Id*. The UBL authorizes local governments to issue orders to property owners "requiring action relative to any unsafe premises," including "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." Ind. Code § 36-7-9-5(a)(5). The UBL provides procedural protections for property owners who receive an order to repair or rehabilitate an unsafe building, such as requirements as to the

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[3] In its appellants' brief, the City refers to the City Council as the Common Council, but we use the term used by the trial court for consistency.

[4] The City's ordinance adopting the UBL is not in the record, but the City acknowledges that it adopted the UBL in 2001. Appellants' Reply Br. at 49.

information to be included in an order, a "sufficient time" of ten to sixty days to make repairs before a fine may be imposed, a ten-day period to appeal the order, and limits on the civil penalty for noncompliance with an order to $2500 and on the accrual of such a civil penalty to not more than $1000 every ninety days. Ind. Code §§ 36-7-9-5(b)-(c), -7(a), -7.5(b)-(c).

[6] In 2008, the City Council enacted the PMC, which establishes "minimum requirements and standards" for existing residential and nonresidential structures and premises "to insure public health, safety, and welfare." Ex. Vol. 4 at 6.[5] In addition, the PMC contains provisions to enforce its safety requirements and standards, many of which address the same subject matter as the enforcement provisions in the UBL, such as provisions which govern orders and notice, the imposition of penalties, and the appeals process. *Id*. at 8-9, 11. However, many PMC enforcement provisions differ from those in the UBL. For example, the PMC allows twenty days to appeal an order rather than the ten days provided by the UBL. *Id*. at 11 (§ 111.1). Also, the PMC provides, "This ordinance does not supersede Federal or State laws, statutes or regulations, except as allowed." *Id*. at 26.

[7] In February 2016, the City Council enacted an ordinance that established an inspection program. Appealed Order at 5 (#22). In August 2016, the City began inspecting Pleasant Ridge rental properties for PMC violations and

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[5] Although the parties cite the exhibit volumes as part of the transcript, e.g., Tr. Vol. IV, the exhibit volumes are titled "Exhibits," and therefore we cite to the exhibit volumes separately from the transcript volumes.

issuing citations. The citations imposed a separate fine for each violation, the fines were imposed as of the date the violation was discovered, and the fines began accumulating daily. *Id*. at 9 (#42). In addition, the citations did not provide any grace period to allow property owners to make repairs during which fines would not be imposed. *Id*. The citations cite both the UBL and the PMC and are confusing as to which provisions the City was intending to operate under. *Id*. at 20 (#91-92). The citations explain that an appeal of the order and fine may be made to the "hearing authority," which is the term used in the UBL. *Id*. (#91); Ex. Vol. 8 at 187, 192. The citations indicate that the appeal period is ten days, which is from the UBL, rather than twenty days as provided in the PMC. Appealed Order at 20 (#91) (citing Ind. Code § 36-7-9-7(a) and PMC § 111.1); Ex. Vol. 8 at 187, 192. During the inspection process, the City sought a search warrant to conduct an interior inspection, which was issued pursuant to the UBL. Appealed Order at 20 (#91) (citing Ind. Code § 36-7-9-16).

[8] In January 2017, the Association filed an eleven-count complaint against the City, which was subsequently amended to add the remaining appellees. In February 2017, the Homeowners moved for a preliminary injunction, asking the trial court to enjoin the City from continuing its practice of "imposing ruinous fines that can be waived only by selling to the developer or tearing down one's own home" to force Pleasant Ridge property owners to sell to the developer so that the developer can demolish every home and build a new subdivision. Appellants' App. Vol. 2 at 127-28. The motion for preliminary

injunction was based on four of the eleven counts in the complaint; namely, that the City's manner of enforcing the PMC violated (1) the UBL, (2) the PMC itself, (3) the Equal Protection Clause, and (4) the Privileges and Immunities Clause. *Id*. at 128.

[9] In September 2017, the trial court held an evidentiary hearing on the Homeowners' motion for preliminary injunction. In December 2017, the trial court issued the Appealed Order granting a preliminary injunction. As to the Homeowners' claim that the City's manner of enforcing the PMC violates the UBL, the trial court concluded that they are unlikely to prevail on that claim because the City is not required to follow the UBL. In relevant part, the trial court found that based on the plain language of the UBL and Indiana Code Chapter 36-1-3, also known as the Home Rule Act, the City was not required to exclusively follow the UBL. Appealed Order at 18-20 (#83-92). The trial court also found that the citations are "confusing as to what provisions of the UBL and/or the PMC it is that the City intends to operate under, but the court cannot find that they are REQUIRED to do one or the other exclusively." *Id*. at 20 (#92). The trial court declined the Homeowners' request to make specific findings regarding the City's violations of the UBL, although it found that the City "made no effort to argue that it ha[d] complied with the procedural requirements" of the UBL, and that "if the UBL were mandatory, the City is not in compliance." *Id*. at 18, 20 (#82, 93).

[10] In contrast to its conclusion regarding the Homeowners' UBL claim, the trial court concluded that the Homeowners are likely to prevail on their claims that

the City's manner of enforcing the PMC violated the PMC, the Equal Protection Clause, and the Privileges and Immunities Clause. The trial court concluded that because the Homeowners are likely to succeed on the merits of a claim that the government is violating the law, a preliminary injunction should issue under Indiana's per se rule.[6] The City now brings this interlocutory appeal. The Homeowners cross-appeal the trial court's finding that the City is not required to follow the UBL and the conclusion that they are unlikely to succeed on their UBL claim.

Discussion and Decision

[11] This is an appeal from the grant of a preliminary injunction. We observe that the trial court is required to issue special findings of fact and conclusions thereon when determining whether to grant a preliminary injunction. *Thornton-Tomasetti Eng'rs v. Indianapolis-Marion Cty. Pub. Library*, 851 N.E.2d 1269, 1277 (Ind. Ct. App. 2006); Ind. Trial Rule 52(A). We review the special findings and conclusions for clear error. Ind. Trial Rule 52(A). "Findings of fact are clearly erroneous when the record lacks evidence or reasonable inferences from the evidence to support them. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made." *Coates v. Heat Wagons, Inc.*, 942 N.E.2d 905, 912 (Ind. Ct. App. 2011). "We neither reweigh the evidence nor reassess witness credibility, but consider only

[6] The per se rule provides that where a government entity clearly violates a law, the public interest is so great that an injunction should issue without requiring the moving party to establish irreparable harm or greater injury. *Indiana Family & Soc. Servs. Admin. v. Walgreen Co.*, 769 N.E.2d 158, 161-62 (Ind. 2002).

the evidence favorable to the judgment and all reasonable inferences to be drawn therefrom." *Clark's Sales & Serv., Inc. v. Smith*, 4 N.E.3d 772, 780 (Ind. Ct. App. 2014). We review questions of law de novo. *Planned Parenthood of Indiana v. Carter*, 854 N.E.2d 853, 863 (Ind. Ct. App. 2006), *trans. denied*.

[12] To obtain a preliminary injunction, the moving party typically must show by a preponderance of the evidence that

> (1) the movant's remedies at law are inadequate, thus causing irreparable harm pending resolution of the substantive action; (2) the movant has at least a reasonable likelihood of success at trial by establishing a prima facie case; (3) threatened injury to the movant outweighs the potential harm to the nonmoving party resulting from the granting of an injunction; and (4) the public interest would not be disserved.

Apple Glen Crossing, LLC v. Trademark Retail, Inc., 784 N.E.2d 484, 487 (Ind. 2003). The power to issue a preliminary injunction should be used sparingly, with such relief granted only in rare instances in which the law and facts are clearly within the movant's favor. *Clark's*, 4 N.E.3d at 780.

[13] Although the trial court granted the preliminary injunction based on its conclusion that the Homeowners are likely to succeed on three of their claims, the Homeowners argue that the trial court clearly erred in concluding that they are unlikely to succeed on their claim that the City's manner of enforcing the PMC violates the UBL. Specifically, they assert that contrary to the trial court's finding, the plain language of the UBL and Home Rule Act establishes that the City is required to follow the UBL. We agree.

[14] Resolution of this issue involves statutory interpretation, and such issues "present questions of law, which we review de novo." *Matter of Supervised Estate of Kent*, 99 N.E.3d 634, 637 (Ind. 2018). "Our primary goal in reviewing statutes is to determine and follow the legislature's intent. The best indicator of legislative intent is the statutory language, and where the statute is clear and unambiguous, we apply it as drafted without resort to the nuanced principles of statutory interpretation." *Id*. at 638 (citations and quotation marks omitted). "We give undefined terms their plain and ordinary meaning, and we may consult English language dictionaries when they are helpful in determining that meaning." *Id*. However, where a word is defined, we are bound by that definition. *Id*.

[15] We begin by examining the UBL. Section 36-7-9-1 provides, "This chapter applies to each consolidated city and its county. This chapter also applies to any other municipality or county that adopts an ordinance under section 3 of this chapter." Section 36-7-9-3 provides, "The legislative body of a municipality or county may adopt this chapter by ordinance." By its plain terms, the UBL applies to consolidated cities, but it applies to other municipalities only if they voluntarily adopt it. Here, the parties agree that the City was not required to adopt the UBL.[7] However, the trial court found, and the City agrees, that in 2001, the City passed an ordinance adopting the UBL pursuant to Section 36-7-

[7] The unspoken premise here is that the City is not a consolidated city.

9-3. Having adopted the UBL, the City is now bound by its provisions. Ind. Code § 36-7-9-1.

[16] Generally, the provisions of the UBL apply to "unsafe buildings" and "unsafe premises." These terms are defined as follows:

> (a) For purposes of this chapter, a building or structure, or any part of a building or structure, that is:
>
> > (1) in an impaired structural condition that makes it unsafe to a person or property;
> >
> > (2) a fire hazard;
> >
> > (3) a hazard to the public health;
> >
> > (4) a public nuisance;
> >
> > (5) *dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance*; or
> >
> > (6) vacant or blighted and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance;
>
> is considered an unsafe building.
>
> (b) For purposes of this chapter:
>
> > (1) an unsafe building; and

> (2) the tract of real property on which the unsafe building is located;
>
> are considered unsafe premises.

Ind. Code § 36-7-9-4 (emphasis added). Significant to this case is that an unsafe building is one that is "dangerous to a person or property because of a violation of [an] ordinance concerning building condition or maintenance." *Id*. The UBL itself does not contain any specific building safety standards, but it clearly anticipates that municipalities have or will adopt ordinances with such safety standards.[8]

[17] The UBL provides local governments with procedures to enforce compliance with local building ordinances. Section 36-7-9-5(a) provides,

> The enforcement authority *may* issue an order requiring action relative to any *unsafe premises*, including … 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*.

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[8] Also, the UBL addresses vacant structures and provides as follows:

> In recognition of the problems created in a community by vacant structures, the general assembly finds that vigorous and disciplined action should be taken to ensure the proper maintenance and repair of vacant structures and encourages local governmental bodies to adopt maintenance and repair standards appropriate for the community in accordance with this chapter and other statutes.

Ind. Code § 36-7-9-4.5(k). We note that when the City cites this provision in its argument, it ignores the fact that it applies to vacant structures.

(Emphases added.)[9] By its plain terms, Section 36-7-9-5(a) governs orders that apply to "unsafe premises," which is a term specifically defined in Section 36-7-9-4. Therefore, the orders governed by Section 36-7-9-5(a) apply to buildings that are dangerous to a person or property because of a violation of an ordinance concerning building condition or maintenance. Ind. Code § 36-7-9-4. We note that because Section 36-7-9-5 provides that the "enforcement authority *may* issue an order," the enforcement authority is not required to issue an order. Although part of Section 36-7-9-5(a) is permissive, it also contains mandatory provisions: "Notice of the order *must* be given under section 25 of this chapter. The ordered action *must* be reasonably related to the condition of the unsafe premises and the nature and use of nearby properties." (Emphases added.) Accordingly, by their plain terms, these provisions of the UBL apply whenever the enforcement authority does choose to issue an order relative to any buildings that are dangerous to a person or property because of a violation of an ordinance concerning building condition or maintenance. Local governments that have adopted the UBL are required to comply with these and other such mandatory provisions. As previously mentioned, the UBL provides procedural protections for property owners who receive an order to repair or rehabilitate an unsafe building, such as requirements as to the information to be included in an order, a "sufficient time" of ten to sixty days to make repairs before a fine may be imposed, a ten-day period to appeal the order, and limits on the civil penalty

[9] The "enforcement authority" is the chief administrative officer of the department authorized to administer the UBL. Ind. Code § 36-7-9-2.

for noncompliance with an order to $2500 and on the accrual of such a civil penalty to not more than $1000 every ninety days. Ind. Code §§ 36-7-9-5(b)-(c), -7(a), -7.5(b)-(c).

[18] In 2008, the City adopted the PMC, which sets forth specific building and property standards to insure public health, safety and welfare. Pursuant to the UBL's plain terms, a violation of the PMC safety standards that renders a building dangerous to a person or property is an unsafe building to which the UBL applies. Ind. Code § 36-7-9-4(a)(5). As discussed, the UBL does not provide specific building safety standards, so in this respect, the PMC is complementary to the UBL. However, the PMC contains its own enforcement provisions, such as those which govern notice of violations, the imposition of penalties, and the appeals process, which overlap with but differ from the UBL enforcement provisions. Ex. Vol. 4 at 8-9, 11. The City argues that pursuant to the Home Rule Act, it is not required to follow the enforcement provisions of the UBL but rather is empowered to choose whether to operate under the UBL or the PMC. We disagree.

[19] It is true, as the City asserts, that the Home Rule Act implements the "policy of the state … to grant units all the powers that they need for the effective operation of government as to local affairs." Ind. Code § 36-1-3-2. And the Home Rule Act provides that "a unit has: all powers granted it by statute; and all other powers necessary or desirable in the conduct of its affairs, even though not granted by statute." Ind. Code § 36-1-3-4(b). However, the Home Rule Act also provides that "[i]f there is a constitutional or statutory provision

requiring a specific manner for exercising a power, a unit wanting to exercise the power must do so in that manner." Ind. Code. § 36-1-3-6. Given that the City has adopted the UBL, the Home Rule Act, by its plain terms, requires the City to obey the UBL.[10] Moreover, the PMC explicitly provides, "This ordinance does not supersede Federal or State laws, statutes or regulations, except as allowed." Ex. Vol. 4 at 26.

[20] Based on the foregoing, we conclude that the City is required to comply with the UBL and that the City must enforce the PMC within the confines and strictures of the UBL. Accordingly, the trial court clearly erred in finding that the City is not required to follow the UBL. Because the trial court found that the UBL was not mandatory, the trial court did not address how the UBL impacts the City's enforcement of the PMC. Some of the provisions in the UBL are permissive, others are mandatory. Some provisions of the PMC may conflict with the UBL, some provisions will be compatible with the UBL, and many provisions will address subject matter not covered by the UBL. Therefore, we remand for the trial court to consider how the UBL and the PMC work together in light of our conclusion that the City is bound to enforce the PMC in accordance with the UBL, and to reconsider the Homeowners' claim

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[10] The City argues that the PMC has legal force independent of the UBL because nothing in the UBL "'expressly denies' local units the power to choose their own safety regulations and means of enforcement for those requirements." Appellants' Reply Br. at 48. It is true that the UBL does not contain specific safety regulations. As discussed, the UBL anticipates that municipalities have or will adopt specific safety regulations. In addition, the UBL does not prohibit local units from choosing their own means of enforcement. However, the City chose to adopt the UBL, and therefore it is bound by the enforcement provisions of the UBL.

that the City's manner of enforcing the PMC violates the UBL. Further, because the trial court based its conclusions regarding the Homeowners' remaining claims on the erroneous premise that the City is not required to follow the UBL, those claims, if the Homeowners choose to pursue them, will need to be reexamined. As such, we need not address the issues raised by the City. We reverse the Appealed Order and the order granting the preliminary injunction and remand for further proceedings consistent with this opinion.

[21] Reversed and remanded.

Bailey, J., and Brown, J., concur.

IN THE CIRCUIT COURT NO. 2 FOR CLARK COUNTY
STATE OF INDIANA

CHARLESTOWN PLEASANT RIDGE NEIGHBORHOOD ASSOCIATION CORPORATION, JOSHUA CRAVEN, TINA BARNES, DAVID AND ELLEN KEITH, AND BOLDER PROPERTIES, LLC, an Indiana Limited Liability Company,	)	
Plaintiffs,	)	Case # 10C02-1701-CT-010 HON. JASON M. MOUNT, SPECIAL JUDGE
v.	)	
CITY OF CHARLESTOWN, INDIANA, a municipality, CHARLESTOWN BOARD OF PUBLIC WORKS AND SAFETY,	)	
Defendants.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled matter came before the Honorable Jason M. Mount, Special Judge, for an evidentiary hearing on Plaintiffs' Motion for a Preliminary Injunction on September 1, 2017 at the Scott County Circuit Court in Scottsburg, Indiana. Anthony Sanders, Keith Diggs, Jeffrey Redfern, and Stephen Voelker appeared on behalf of Plaintiffs Charlestown Pleasant Ridge Neighborhood Association, Joshua Craven, Tina Barnes, David and Ellen Keith, and Bolder Properties, LLC. Michael Gillenwater and Mark Crandley appeared on behalf of Defendants City of Charlestown and the Charlestown Board of Public Works and Safety. The fact record for the preliminary-injunction motion closed on September 1, 2017. The Court granted the parties until September 8, 2017 to file authorities and citations, and until September 22, 2017 to file proposed findings of fact and conclusions of law.

Based upon the Court's prior orders, files, and records, as well as the testimony, exhibits, submissions, and arguments of counsel in this case, the Court issues the following findings of fact, conclusions of law, and order granting the motion for a preliminary injunction.

FINDINGS OF FACT

The Parties

1. Plaintiff Charlestown Pleasant Ridge Neighborhood Association ("Association") is a nonprofit entity incorporated under the laws of Indiana. The Association has approximately 50 members, all of whom own property in the Pleasant Ridge neighborhood in Charlestown, Indiana. The Association owns a duplex at 114–116 Riley Avenue in the Pleasant Ridge neighborhood of Charlestown.

2. Plaintiff Joshua Craven is a longtime resident of the Pleasant Ridge neighborhood where he now owns a home. He lives there with his four-year old daughter. He is the president of Plaintiff Association.

3. Plaintiff Tina Barnes is a longtime resident of Pleasant Ridge where she also owns a home. She lives there with her disabled adult daughter and two grandchildren. She is a member of the Charlestown City Council. She is also a member of Plaintiff Association.

4. Plaintiff Ellen Keith has lived in her home in Pleasant Ridge with her husband, Plaintiff David Keith, for over 40 years. She is also a member of Plaintiff Association. They live next door to their daughter, granddaughter, and great grandchild.

5. Plaintiff Bolder Properties, LLC owns four duplexes in Pleasant Ridge, and is owned by Ann Eldridge, a resident of Jeffersonville, Indiana. Ms. Eldridge, through Bolder Properties, LLC, purchased the properties in 2015 and borrowed over $200,000 to do so. She is now paying off that loan through the rent she receives from her tenants.

6. Defendant City of Charlestown ("City") is a municipality in Clark County, Indiana. The mayor of Charlestown is G. Robert Hall.

7. Defendant Charlestown Board of Public Works and Safety ("Board") is an entity within the City of Charlestown government. As is relevant to this case, the Board hears appeals from citations issued to property owners for code violations. Mayor Hall is a member of the Board.

The Pleasant Ridge Neighborhood

8. Pleasant Ridge is a neighborhood within the City of Charlestown. The residents are primarily people of modest means.

9. The neighborhood originated during World War II when the Army constructed housing for personnel at a since-abandoned munitions factory in Charlestown. The Gunnison Housing Corporation built the Pleasant Ridge homes at its factory in New Albany, Indiana and then assembled the components onsite. The primary original layout in Pleasant Ridge was a 1,250 square-foot duplex. Many of the properties remain duplexes, while others have been consolidated into single-family units.

10. Over the years, many of the Pleasant Ridge properties became rental units. In recent years, approximately sixty to seventy percent of the residents were low-income renters.

11. Pleasant Ridge provides affordable housing in Charlestown, whether from the perspective of a renter or a home buyer. It would be difficult if not impossible to rent or buy a home in Charlestown outside of Pleasant Ridge for the same prices that are available within Pleasant Ridge.

12. It would be difficult if not impossible for Plaintiffs to purchase homes elsewhere with the same space and amenities that their Pleasant Ridge homes have.

13. Defendant City believes that Pleasant Ridge is in dire need of redevelopment. Mayor Hall testified that Pleasant Ridge consumes a disproportionate share of city resources. City Inspector Michael Anthony Jackson testified that, due to the materials and methods of construction, the Gunnison homes were only ever intended to be temporary.

The 2014 Effort at Redevelopment

14. In 2014, the City applied to the State of Indiana for a multi-million-dollar grant under the State's Blight Elimination Program ("BEP"). According to the City's BEP application, the redevelopment plan for Pleasant Ridge involved "the demolition of 354 homes," which represents every home in the neighborhood, including the homes owned by Plaintiffs and members of Plaintiff Association.

15. For the BEP application, the City partnered with a property developer called Neace Ventures. Neace Ventures is owned by John Neace.

16. Plaintiffs Craven, Barnes, David and Ellen Keith, and other neighborhood residents formed Plaintiff Association in 2014 to oppose the BEP application and the demolition of their entire neighborhood, including their own homes.

17. In November 2014, the Charlestown City Council voted down the plan to redevelop Pleasant Ridge. Charlestown did not receive any grant money under the Blight Elimination Program.

The Latest Effort at Redevelopment

18. In November 2015, Mayor Hall stood for reelection. A major issue was the redevelopment of Pleasant Ridge. Mayor Hall and his slate of allied candidates for City Council seats won their elections.

19. In that same election, Plaintiff Barnes won election to the City Council as an opponent of wholesale redevelopment in Pleasant Ridge. Plaintiff Barnes has consistently voted against ordinances and resolutions that she believes target Pleasant Ridge for destruction.

20. In early 2016, the City Council, under Mayor Hall's leadership, and the City of Charlestown Redevelopment Commission, of which Mayor Hall is the president, began laying the groundwork for the next attempt to redevelop Pleasant Ridge.

21. On January 18, 2016, the City Council passed Resolution 2016-R-1, which is entitled "A Resolution Authorizing Action to Develop and Implement Plans for Improvement of Conditions in the Pleasant Ridge Subdivision." Resolution 2016-R-1 declared Pleasant Ridge to be an "area needing redevelopment" under Indiana's redevelopment statutes, Ind. Code. §§ 36-7-1-3, *et seq*. Plaintiff Barnes was the sole City Council vote against Resolution 2016-R-1.

22. On February 1, 2016, the City enacted Ordinance 2016-OR-2, which established "An Inspection Program for At-Risk Residential Properties in the City of Charlestown, Indiana." Plaintiff Barnes was the sole City Council member to vote against the rental-inspection ordinance.

23. On February 15, 2016, the City enacted Ordinance 2016-OR-7, which is entitled "An Ordinance Prohibiting Public Nuisances." Plaintiff Barnes was the sole City Council member to vote against the public-nuisance ordinance.

24. On October 27, 2016, the Redevelopment Commission passed Resolution 2016-R-6, which declared Pleasant Ridge to be an area in need of redevelopment under Indiana's redevelopment statutes, Ind. Code. §§ 36-7-1-3, *et seq*. Redevelopment Commission Resolution 2016-R-6 also approved a redevelopment plan for Pleasant Ridge.

25. On November 7, 2016, the City Planning Commission passed Resolution 2016-R-3, which approved Redevelopment Commission Resolution 2016-R-6 declaring Pleasant Ridge to be an area in need of development and adopting the Redevelopment Commission's plan for redevelopment.

26. On November 7, 2016, the City Council passed Resolution 2016-R-13, which approved Redevelopment Commission Resolution 2016-R-6 declaring Pleasant Ridge to be an area in need of redevelopment and adopting the Redevelopment Commission's plan for redevelopment. Plaintiff Barnes was the sole City Council member to vote against the Resolution.

27. In November 2016 (specific date was not noted), the Redevelopment Commission passed Redevelopment Commission Resolution 2016-R-8, which called for all City boards, commissions, and councils to follow a policy in which fines levied for violations of the City's property-maintenance code are never waived.

28. On December 8, 2016, the Redevelopment Commission passed Resolution 2016-R-9, which confirmed Redevelopment Commission Resolution 2016-R-6 declaring Pleasant Ridge to be an area in need of redevelopment and adopting the plan for redevelopment.

Coordination with Neace and Enforcement of the Property-Maintenance Code

29. The City's relationship with developer John Neace did not end with the demise of the 2014 BEP application and the original plan to redevelop Pleasant Ridge in partnership with Neace Ventures.

30. On January 25, 2016, one week after the City Council passed Resolution 2016-R-1 declaring Pleasant Ridge to be an area in need of redevelopment, Mayor Hall emailed John

Neace to tell him that "We are having landlords calling wanting to sell their properties, because they know code enforcement is coming June 1st."

31. The Mayor intended his January 25, 2016 email to alert Mr. Neace to the possible opportunity to buy large numbers of properties in Pleasant Ridge from landlords who owned multiple units. At that time, a small handful of landlords owned dozens of Pleasant Ridge properties. The Mayor anticipated that the plan to enforce the 2008 property-maintenance code against Pleasant Ridge properties, as set forth in City Council Resolution 2016-R-01, would impose such steep fines on the owners of the Pleasant Ridge properties that they would be willing to sell to a developer such as Mr. Neace for demolition.

32. The Mayor could not recall sending an email to any other developer besides Mr. Neace alerting him or her to property-acquisition opportunities in Pleasant Ridge that the City's declared plan of code enforcement might create. There are no such emails in the record.

33. The Mayor wrote Mr. Neace again on April 8, 2016, asking for Mr. Neace's input on Pleasant Ridge redevelopment, and noting that the Mayor gets "very nervous because I don't like making decisions that ultimately affects your money and the success of this project." By "this project," the Mayor was referring to the redevelopment of Pleasant Ridge.

34. The Mayor could not recall sending an email to any other developer besides Mr. Neace asserting that the Mayor was personally nervous because he was making decisions that affected the developer's money and the success of Pleasant Ridge redevelopment. There are no such emails in the record.

35. On June 2, 2016, the Mayor wrote Mr. Neace again, this time notifying him that the City had sent letters to Pleasant Ridge landlords announcing that rental inspections would soon begin. The Mayor attached a copy of this letter to the email to Mr. Neace. As with his

January 25, 2016 email, the Mayor was alerting Mr. Neace to the fact that the inspections of Pleasant Ridge rental properties for compliance with the property-maintenance code would soon result in buying opportunities for Mr. Neace.

36. The Mayor could not recall sending an email to any other developer notifying him or her that the City had sent letters to Pleasant Ridge landlords announcing that rental inspections would soon begin. There are no such emails in the record.

37. On June 13, 2016, Mr. Neace, through his agent John Hampton, created a new limited liability corporation called Pleasant Ridge Redevelopment, LLC ("PRR").

38. According to an email that Mr. Hampton sent Mr. Neace on July 6, 2016, the Mayor, the City Attorney, and Mr. Hampton met to discuss the redevelopment of Pleasant Ridge. That discussion included speculation that 30-40 property owners would refuse to sell and that eminent domain would eventually be required.

Inspections and Fines in Pleasant Ridge and Continued Coordination with Neace

39. In August 2016, City Inspector Michael Anthony Jackson began inspecting Pleasant Ridge rental properties pursuant to City Resolution 2016-R-1 and the new rental-inspection ordinance. Mr. Jackson inspected exteriors and interiors for violations of the City's 2008 property-maintenance code. The City has a policy and practice of issuing fines against Pleasant Ridge property owners where properties are fined immediately from the date of a citation.

40. The City has a policy and practice of issuing fines against Pleasant Ridge property owners where the fines accrue daily.

41. The City has a policy and practice of issuing fines against Pleasant Ridge property owners where the fines are for more than $2,500, once a few days of accruing fines have past.

42. The citations that Mr. Jackson issued to Pleasant Ridge landlords beginning in August 2016 conformed to this policy and practice. The citations imposed a separate fine for each violation that Mr. Jackson identified. Moreover, the citations did not allow for any grace-period during which landlords could make repairs without being fined. The fine for each violation was imposed immediately and would accumulate on a daily basis. Collectively, the various fines assessed on each property would add up to significant sums very quickly.

43. For example, on August 29, 2016, City Inspector Jackson issued citations to landlord Jimmy Woods based on Mr. Jackson's inspection of the exteriors of fourteen rental properties that Mr. Woods then owned in Pleasant Ridge. The various fines on all of the properties added up to $5,600 per day. Mr. Jackson did not mail the citations until August 31, 2016, meaning that Mr. Woods already owed $16,800 in fines on the day that Mr. Jackson placed the notices in the mail.

44. Faced with these fines, the large landlords in Pleasant Ridge elected to sell their properties to the newly created PRR, which paid $10,000 for each one. Between September 2016 and September 2017, PRR has acquired roughly 150 properties in Pleasant Ridge.

45. Under City policy, and an agreement entered into between the City and PRR, PRR theoretically assumes responsibility for the daily accumulating fines. But the City's policy and its agreement with PRR also allows all fines to be waived if the property is demolished. Because PRR has pledged to demolish its Pleasant Ridge properties at some point, the City has not collected on any of the fines. Most of these homes have not in fact been demolished and remain standing and unoccupied, creating a nuisance and health and safety hazard in and of themselves.

46. Technically, PRR now owes the City many millions of dollars because it has not yet demolished its Pleasant Ridge properties. The $5,600 in daily fines against the 14 properties formerly owned by Jimmy Woods, for example, have now accumulated for over one year, meaning that the fines for just those 14 properties now exceed two million dollars.

47. The agreement between PRR and the City was memorialized in an October 24, 2016 letter from Mr. Hampton to Mr. Jackson, acknowledging the City's policy of the waiver of fines for the Pleasant Ridge properties that PRR has acquired. As part of this agreement, PRR is required to update the City periodically about how many properties it owns and when they are slated to be demolished.

48. Once PRR acquired a Pleasant Ridge property, the City did not and presently does not require PRR to make any of the repairs that the citations identified. This is true even if tenants remained in the rental units, which hundreds did until roughly April 2017 when leases began to expire.

49. After the tenants move out of properties PRR has acquired, PRR boards many of them up.

50. New problems have arisen at many PRR properties since they were boarded up, including the presence of vermin, garbage, and tall grass. Plaintiff Ellen Keith and other Pleasant Ridge residents have complained to the City about these problems. But after the City failed to have PRR correct the problems, the neighborhood residents contacted the Clark County Health Department. The Health Department subsequently inspected several PRR properties and tried to work to have both the City and PRR address their problems.

51. The City has not issued any citations against any PRR properties since PRR acquired them, despite the complaints about vermin, garbage, and tall grass.

52. As recently as September 2017, some of the properties owned by PRR were still occupied by renters.

53. On November 8, 2016, Mayor Hall texted John Neace, Brigadier General Larry Lunt, and John Hampton (the head of PRR). Brigadier General Lunt is a part owner of PRR, and Mayor Hall introduced him to John Neace in August 2016. In this text, Mayor Hall wrote "Great News. The city council voted to pass the pleasant ridge redevelopment plan last night."

54. Mayor Hall did not recall writing any other developer to report that it was great news that the redevelopment plan passed, and the record contains no evidence of such communications.

55. Although there was no written redevelopment agreement between the City and PRR throughout the process of fines and property acquisition in Pleasant Ridge, the City and Mr. Neace entered a formal development agreement in 2017 regarding a project called Springville Manor. This project is located in Charlestown, but outside of Pleasant Ridge. On March 15, 2017, Springville Manor LLC was formed, with John Hampton as the registered agent. Springville Manor is a real-estate development currently under construction with 32 small homes. The public materials for Springville Manor indicate that it is also owned by John Neace. The Mayor testified that one purpose of Springville Manor is to provide a relocation option for senior citizens living in Pleasant Ridge.

Plaintiff Association's Duplex, Inspections, and Fines

56. In late 2015, Plaintiff Association acquired a duplex at 114–116 Riley Avenue in Pleasant Ridge. The Association refurbished the duplex to create two separate rental units. Both sides of the Association's duplex are occupied by tenants.

57. The Riley Avenue property serves two purposes. First, it is a source of revenue for the Association's efforts to maintain members' homes, as well as the neighborhood at large, in good condition. Second, the duplex furthers the Association's goal of revitalizing the neighborhood, which its members prefer to the City's goal of redeveloping the neighborhood by forcing them out, demolishing their homes, and replacing them with higher-income residents.

58. As a Pleasant Ridge rental unit, the Riley Avenue property was subject to inspection under the 2016 rental-inspection ordinance. City Inspector Jackson conducted an inspection of the duplex's exterior on September 26, 2016. Then, after securing a warrant, he returned to inspect the interior of each side of the duplex on November 3, 2016.

59. The exterior inspection resulted in Mr. Jackson imposing $600 in fines on Plaintiff Association on September 26, 2016. As with the fines imposed on other Pleasant Ridge landlords, additional $600 fines also accumulated daily.

60. The postal tracking number for the citations for the exterior violations indicates that the notice and order was not mailed until September 28, 2016 and was not delivered until October 4, 2016. According to the citations themselves, this means that the Association had already accumulated $5,400 in fines from the exterior inspection (September 26 through October 4, inclusive) when it received the mailing from Mr. Jackson.

61. The citations for the interior inspections followed the same pattern. The citations were issued on November 3, 2016, imposing a $200 fine for violations on both sides of the Riley Avenue duplex. The citations were not delivered to the Association until November 14, meaning that the Association had accumulated $2,400 in fines from the interior inspections (November 3 through November 14, inclusive). These citations, like the other citations issued in Pleasant

Ridge, did not allow for any grace-period during which property owners could make repairs without incurring fines.

62. In contrast to the other landlords who had been issued large fines, the Association did not sell its Riley Avenue property to PRR. Nor would the Association pledge to demolish its duplex. As a consequence, and in contrast to PRR, the City required the Association both to make repairs to its property and to pay the fines. If the Association had sold its duplex to PRR, the City would not have required PRR to pay any fines or make any repairs as long as PRR pledged to demolish the property at some point.

63. The Association took steps immediately upon receipt of the citations from Mr. Jackson to perform the indicated repairs. Most repairs were accomplished quickly. Others, such as a foundation repair, required a few weeks to resolve and have the appropriate professional sign off. The Association performed all of the mandated repairs, and the Riley Avenue property is presently in compliance with the property-maintenance code, as Mr. Jackson acknowledges.

64. Plaintiff Craven, the Association's president, asked Defendant Board of Public Works and Safety, the entity within the City responsible for hearing appeals from citations, to waive the fines in light of the Association's immediate effort to comply with the citations. The Board refused.

65. The Board eventually performed a final calculation of the Association's fines, apparently subtracting the 10-day notice period as indicated on the face of the notice. In the end, the Board imposed a total fine of $8,950. The Association filed a timely appeal as part of its original complaint in this case. The appeal of the fine will be resolved as part of this case going forward and is not at issue in the present motion for a preliminary injunction.

Plaintiffs' Credible Fear of Immediate, Daily Fines Against Their Properties

66. The Association and its members perceive the inspections of Pleasant Ridge rental properties as part of the City's avowed plan to redevelop the Pleasant Ridge neighborhood from scratch. The Association and its members view the inspections as a coordinated effort to ensure that PRR is able to acquire as many properties as possible via transactions that have the appearance of legitimacy.

67. Plaintiffs and other Association members have a credible fear that the City will come after their property with immediate, daily fines.

68. First, the City is coordinating with John Neace, through PRR and Springville Manor, to accomplish the complete redevelopment of Pleasant Ridge, including the destruction of Plaintiffs' homes and the homes of the Association's members.

69. Second, Mayor Hall has made statements indicating to property owners that, notwithstanding the wave of inspections that has been occurring in Pleasant Ridge, property owners should not waste their money repairing their homes or bringing them up to code. In a November 8, 2016 email to Plaintiff Barnes, Mayor Hall wrote that he was being "told that homeowners in [Pleasant Ridge] are being asked by some opposed to redevelopment to make significant investments to renovate their homes, even when that might possibly not be in their best financial interest....[I]f they proceed with inaccurate or incomplete information it could be financially disastrous to them." Although Mayor Hall, when questioned about this statement, testified that he was merely suggesting that people should not invest more in their houses than the houses were worth, the Court does not find that testimony credible. Mayor Hall's statement was made in answer to the question, by Plaintiff Barnes, about whether people who fixed up their homes would be allowed to keep them. Mayor Hall said he would not make that promise and that the redevelopment of Pleasant Ridge is an all-or-nothing deal. He was clearly stating that money

spent repairing homes would be wasted because the City intends to demolish the homes regardless of any repairs that property owners might make.

70. Additionally, on November 22, 2016, Mayor Hall posted on Facebook that he "hope[s] the residents [of Pleasant Ridge] won't listen to Josh Craven[] and his followers [i.e., Plaintiffs in this lawsuit] who have already cost property owners thousands of dollars by giving out false information, false claims and false hope." Although Mayor Hall, when questioned about this statement, testified that he had been referring to the fact that the City had lost the opportunity to take advantage of the Blight Elimination Program grant in 2014, the Court does not find the Mayor's present gloss on his own writing persuasive in light of what the Mayor actually wrote and the context of that written statement. Mayor Hall was clearly referring to expenditures by individual property owners to maintain their Pleasant Ridge properties, which Mayor Hall characterized as a waste because the Mayor is convinced that every home in the neighborhood will be demolished for redevelopment.

71. During the hearing on the preliminary-injunction motion, the Mayor again refused to promise that the Pleasant Ridge homeowners who want to stay in their homes will be allowed to do so if they maintain their properties in good condition.

72. In response to the filing of Plaintiffs' lawsuit on January 11, 2017, Mayor Hall posted a vow on Facebook to continue inspections. On April 17, 2017, as part of the City Resolution ratifying the redevelopment agreement with Mr. Neace's Springville Manor, the City stated that it intended to expand the inspection program to owner-occupied homes. Plaintiff Ellen Keith testified that Mayor Hall personally told her and her husband, Plaintiff David Keith, that he intended to use a combination of fines and eminent domain to force the complete redevelopment of Pleasant Ridge.

73. The Plaintiffs and Association members would struggle to afford the kinds of daily-accruing fines that the City has a practice of issuing in Pleasant Ridge.

74. In light these facts, including the inspections and property transfers that have previously occurred and the Mayor's public statements, the Association and its members reasonably fear that any expenditures to maintain their homes would be a futile waste and that the City will use a combination of inspections and fines to force them to sell their homes.

CONCLUSIONS OF LAW

75. Although the testimony and documentary evidence spans much of the history of Pleasant Ridge and the City's recent effort to engage in redevelopment, the motion for a preliminary injunction before the Court presents only a narrow set of issues. Plaintiffs seek a preliminary injunction ordering the City, in the enforcement of its Property Maintenance Code, to adhere to what they say is the plain language of Indiana's Unsafe Building Law, adhere to what they say is the plain language of the Code, and to enforce the Code evenhandedly among all owners of property in Pleasant Ridge, including PRR. Broadly speaking, Plaintiffs argue that neither the code nor the Unsafe Building Law allow the City to impose immediate, daily accumulating fines for violations of the code. Plaintiffs also argue that the City's differential treatment of PRR and other property owners in Pleasant Ridge violates the federal and state constitutional rights to equal protection.

76. Importantly, Plaintiffs are not arguing that the City should be altogether barred from enforcing its property-maintenance code to ensure appropriate standards of responsible property ownership. Nor are Plaintiffs arguing that they (or the Association's members) should be exempt from the requirements of the property-maintenance code. Plaintiffs agree that safe housing is a legitimate concern of the government, and that tenants and owner-occupied

homeowners should live in safe housing. Their motion, and their arguments in support of that motion, are confined to whether the City is ignoring statutory and constitutional protections for Pleasant Ridge property owners in enforcing the code. Thus, the Court will address only the specific claims raised by Plaintiffs' motion, and not reach any of the larger issues concerning the redevelopment of Pleasant Ridge.

Standard for a Preliminary Injunction

77. Generally, for this Court to issue a preliminary injunction, a plaintiff must establish, by a preponderance of the evidence, the following elements: (1) likelihood of success on the merits; (2) irreparable harm if a preliminary injunction is not issued; (3) the balance of harms weighs in favor of the preliminary injunction; (4) a preliminary injunction is in the public interest. *State v. Econ. Freedom Fund*, 959 N.E.2d 794, 803 (Ind. 2011); *Paramandandam v. Herrmann*, 827 N.E.2d 1173, 1178-79 (Ind. Ct. App. 2005).

78. Further, in suits against a governmental body, such as in this matter, that allege a violation of the law, a plaintiff need only prove that he is likely to succeed on the merits. This is known as Indiana's "per se rule." If a plaintiff does demonstrate he is likely to succeed on the merits "the court has determined that the defendant's actions have violated a statute and, thus, that the public interest is so great that the injunction should issue regardless of whether the plaintiff has actually incurred irreparable harm or whether the plaintiff will suffer greater injury than the defendant." *Stuller v. Daniels*, 869 N.E.2d 1199, 1214 (Ind. Ct. App. 2007).

79. In this matter, the Court determines that Plaintiffs are likely to succeed on the merits of three out of four of their claims. Therefore, under the per se rule, a preliminary injunction should issue.

80. The Court also determines that Plaintiffs meet the other prongs of the preliminary-injunction standard, even if the per se rule did not apply.

Plaintiffs Are Unlikely to Prevail on Their Claim under the Unsafe Building Law

81. Plaintiffs seek a preliminary injunction pursuant to Count II of their Amended Complaint, which alleges violations of Ind. Code § 36-7-9-1, *et seq.*, commonly known as the Unsafe Building Law ("UBL"). Plaintiffs argue that the citations that City Inspector Jackson issued to Pleasant Ridge landlords in 2016, including to Plaintiff Association, violated the procedural protections for property owners in the UBL. Plaintiffs request a preliminary injunction ordering the City to abide by the procedural protections in the UBL in any future enforcement of the City's Property Maintenance Code, 2008-OR-1 ("PMC").

82. The only real dispute here is whether the UBL even applies to the City's enforcement of its PMC. The City has made no effort to argue that it has complied with the procedural requirements of that statute. The City argues, instead, that the PMC is wholly authorized as an exercise of the City's legislative power under the Home Rule Act, Ind. Code §§ 36-1-3-1 *et seq.*, and that the PMC has force independent of the UBL. The City's theory is that the UBL provides a catch-all power for municipalities to address dangerous conditions that are not expressly covered by ordinances, while the PMC concerns more detailed and specifically enumerated requirements.

83. Based on the plain language of the statutes, the Court cannot find that the UBL supersedes or overrides the PMC.

84. However, based upon the plain language of the citations themselves, and the 2001 adoption of the UBL by the City, the UBL does have relevance to the case.

85. Municipalities may choose to adopt the UBL by ordinance. Ind. Code § 36-7-9-3, and the City acknowledges that it has done so.

86. As is relevant here, the UBL "**encourages** (emphasis added) local governmental bodies to adopt maintenance and repair standards appropriate for the community in accordance with this chapter and other statutes." Ind. Code § 36-7-9-4.5(k). The PMC, which the City adopted after its adoption of the UBL, constitutes Charlestown's maintenance and repair standards in addition to the UBL.

87. Additionally, the Home Rule Act, which the City claims as its authorization for enforcing the PMC without regard to the UBL, also provides that "[i]f there is a constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must do so in that manner." Ind. Code § 36-1-3-6(a).

88. The UBL specifically authorizes the "enforcement authority" to issue an order requiring the "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." Ind. Code § 36-7-9-5(a)(5) (emphasis added). So, the UBL provides an explicit means of enforcing property-maintenance codes.

89. In reviewing the relevant statutes as cited by both parties, the Court finds that the UBL does not REQUIRE a specific manner of enforcement, as outlined in the Home Rule Act at I.C. 36-1-3-6. Further the UBL itself states that a municipality MAY (not "shall") issue an order requiring action pursuant to its terms (I.C. 37-7-9-5). The UBL is merely "encouraged" and not required, so the Court must find that the Home Rule interpretation of the Defendant's prevails.

90. The City has chosen to implement the UBL, with certain provisions superseded and/or modified by the PMC.

91. The citations that the City issued for PMC violations explicitly cite the UBL. The ten-day appeal period that the citations identify is also from the UBL, *see* Ind. Code § 36-7-9-7(a), not the PMC, which specifies a twenty-day appeal period. *See* PMC § 111.1. The use of the term "hearing authority," which the citations explicitly state, is from the UBL and not the PMC. *See* Ind. Code § 36-7-9-2. Finally, the search warrant that the City secured to inspect the interiors of Plaintiff Association's rental units was issued pursuant to the UBL. *See* Ind. Code § 36-7-9-16 (authorizing the issuance of property inspection warrants).

92. The citation is confusing as to what provisions of the UBL and/or the PMC it is that the City intends to operate under, but the court cannot find that they are REQUIRED to do one or the other exclusively.

93. Plaintiff requests the Court to make findings of the many instances in their enforcement scheme that the City runs afoul of the UBL. Certainly, if the UBL were mandatory, the City is not in compliance. As the Court finds that the UBL is not mandatory, there is no need to make such findings.

94. As the Defendants are likely to succeed in defense of this claim, the Court declines to issue any injunctive relief for the reasons raised in this count by the Plaintiffs.

Plaintiffs Are Likely to Prevail in Their Claim under the Property-Maintenance Code

95. Although the Unsafe Building Law does not strictly apply, the City is still required to follow the PMC when it uses the PMC against properties in Pleasant Ridge. Plaintiffs argue that the City violated the plain language of its own PMC by imposing immediate, daily accumulating fines, as well as by not providing a grace period within which to bring property

into compliance. The City responds by conceding that certain provisions of its PMC provide procedural protections to property owners, but that another provision in the PMC authorizes the City to issue immediate fines not subject to these protections.

96. The Court agrees with Plaintiffs. The plain language of the PMC requires the City to provide a written order specifying the alleged problems and provide a reasonable opportunity to make repairs before fines may be imposed. In no case does the PMC allow the City to impose immediate, daily accumulating fines for violations of the PMC.

97. The PMC requires that its code official "shall serve a notice of violation or order in accordance with Section 107" of the PMC. PMC § 106.2 (emphasis added).

98. Section 107 provides various procedural protections for property owners. It requires that property owners be given a written notice of violation and "a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the pro-visions [sic] of this code." PMC § 107.2(4).

99. Section 106.4 of the PMC states that when a fine is issued against a property, "each day that a violation continues after due notice has been served shall be deemed a separate offense." PMC § 106.4.

100. The phrase "due notice" in section 106.4 must be read in conjunction with sections 106.2 and 107, which require written notice of violation and a "reasonable time to make the repairs and improvements." PMC §§ 106.2, 107.2(4).

101. The City's issuance of immediate fines against property owners, without written notice of violation or a "reasonable time" for corrective action, violated the PMC. This was true of the fines issued against the Association, Tom Brown, Jimmy Woods, and any other property owners who received immediate fines without an opportunity to correct alleged violations.

102. If the City issues more immediate fines against property owners without a reasonable time to correct alleged violations, the City will violate the PMC again.

103. To find otherwise would be irrational. The City argues that it makes no sense to require property owners who commit to razing their homes to fix deficiencies, despite the fact that they may continue to contain occupants, regardless of the City's supposed paramount concern over the serious health and safety issues these residences pose. What makes no sense is to continue to insist on imposing fines, with no meaningful right to appeal, on homeowners who resolve the problems and bring their residences into compliance, in good faith and in a reasonable time period. If the City's concern over health and safety is to be believed, then these concerns are addressed in either instance – in the first case by razing and in the second by repairing. Ergo, fees should be waived, or not even assessed, in both instances.

104. The City relies upon, among other evidence, the increased statistical risk of fires these homes pose along with instances of deficient and dangerous electrical wiring. Despite these concerns, the City through enforcement of its policy is nevertheless allowing landlords to continue to have occupants live under those dangerous conditions without repair, or to allow such dangerous structures to remain standing indefinitely, while at the same time enforcing fines against responsible owners who correct the problems. This is antithetical to the City's stated goals.

105. It is further irrational to allow these structures to continue to stand indefinitely on a promise that they will be leveled, when allowing them to remain standing and at the same time seeking no code enforcement against them CREATES health and safety problems, and acts to drive down the value and use of the other properties in the area, further putting responsible owners in a "trick-bag" of "sell or lose all value in your property."

106. The City argues that homeowners have three choices: 1) pay the fine; or 2) bring your property up to specifications; or 3) sell to a developer or commit to razing the structure. So long as there is no meaningful opportunity to fix the property and/or to appeal the findings and fines, the options available to homeowners are in fact: 1) pay the fine AND bring your property up to specifications; or 2) sell to a developer (at a significant loss) or commit to razing the structure.

107. Plaintiffs are likely to prevail in their claim that the City has violated the PMC.

108. Plaintiffs have demonstrated by a preponderance of the evidence that the City is likely to violate the PMC again.

109. The City is committed to inspecting all rental properties, including those of Plaintiff Bolder Properties, LLC, and other Association members who are Pleasant Ridge landlords, and to perform those inspections on an annual basis. 2016-OR-01, § 2.3.

110. The City is also committed to inspecting owner-occupied properties in Pleasant Ridge, as it stated in a resolution passed by the Redevelopment Commission in March 2017, thereafter approved by the City Council in April 2017. 2017-R-2, Ex. 3, ¶ 17.

111. These inspections, whether exterior or interior, are likely to result in fines that would be issued in violation of the PMC, just like the inspections of the Association's duplex and the properties of Tom Brown and Jimmy Woods did.

Plaintiffs Are Likely to Prevail on Their Federal Equal Protection Claim

112. Plaintiffs allege that the City has denied them the equal protection of the law, as guaranteed by the Fourteenth Amendment to the United States Constitution, by discriminating against them in favor of a private developer, PRR. Because there is no "suspect classification" at

issue, this equal protection claim is resolved under the "rational basis" standard of review. *Smith v. City of Chicago*, 457 F.3d 643, 650 (7th Cir. 2006).

113. Under the rational-basis standard, Plaintiffs have the burden of showing that "(1) the defendant intentionally treated [them] differently from others similarly situated, (2) the defendant intentionally treated [them] differently because of [their] membership in the class to which [they] belonged, and (3) the difference in treatment was not rationally related to a legitimate state interest." *Id.* at 650–51.

114. Although rational-basis review is deferential to the government, it "is not a toothless" standard. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 439 (1982). Plaintiffs can prevail by "negat[ing] a seemingly plausible basis" for the differential treatment "by adducing evidence of irrationality," and the government's actions cannot be sustained on the basis of a mere "fantasy." *St. Joseph Abbey v. Castille*, 712 F.3d 215, 223 (5th Cir. 2013).

115. Plaintiffs have satisfied the first factor of the rational-basis test, and Defendants do not argue otherwise: The Plaintiffs are a class of property owners who do not wish to sell or demolish their properties. They are similarly situated to the developer because both the developer and the plaintiffs own properties that are currently occupied, or were occupied for several months after they were fined.

116. The City has intentionally treated the developer differently from people who do not wish to demolish their properties. The developer is permitted to continue renting out properties, despite acknowledged violations of the PMC. The developer is not required to make any repairs to protect the health and safety of its tenants. The developer is also not required to pay any fines, and the City has promised to waive all fines when the developer demolishes the

properties it owns. By contrast, Plaintiffs are required to repair their properties immediately, are subjected to massive fines, and cannot have those fines waived.

117. Plaintiffs have also satisfied the second factor, and again, Defendants do not argue otherwise: The City's code-enforcement policy explicitly states that fines should be waived "once the substandard housing is removed." 2016-R-8. So, the differential treatment is related to membership in the Plaintiffs' class—people who do not wish to demolish their properties.

118. The only dispute concerns the third equal-protection factor—whether this differential treatment is rationally related to a legitimate governmental interest. Defendants have proposed one interest: health and safety.

119. Promoting health and safety is a legitimate governmental interest, but the City's differential treatment of the developer and other property owners is not rationally related to that interest.

120. From the standpoint of health and safety, it is irrational to treat someone who immediately brings their property into compliance with the PMC, such as Plaintiff Association, worse than a developer who continues to rent out a property with acknowledged code violations—arguably endangering the tenants who live there and the surrounding homes as well—simply because the developer intends to eventually demolish the property. Plaintiffs are providing safe housing that endangers neither tenants nor neighbors, and Plaintiffs should be treated at least as well under the law as the developer who is providing unsafe housing.

121. It is also irrational, from the standpoint of health and safety, for the City to inspect properties and to impose heavy fines on Plaintiffs for PMC violations while at the same time instructing them not to repair their properties because it would be a waste of money—or even "financially disastrous," as the Mayor stated in one email—to do so.

122. The equal-protection problem extends to the City's policy, as reflected in its agreement with PRR and the testimony of Mayor Hall, that a property owner must pay fines unless the property is demolished. If a property owner refuses to demolish a property, then, under City policy, the fines cannot be waived. This is irrational. The purpose of fines is to penalize a property owner for maintaining unsafe conditions in the Pleasant Ridge neighborhood. Therefore, the ultimate demolition of the property is irrelevant. Demolition does not alter the fact that the property owner allowed unsafe conditions to exist. In the case of PRR, it owns dozens of properties with daily accumulating fines now in the many millions of dollars.

123. The City cannot rationally penalize Plaintiff Association (or any other Pleasant Ridge property owner) for having maintained unsafe conditions in Pleasant Ridge while simultaneously waiving fines for a property owner like PRR that has allowed unsafe conditions to persist in the neighborhood in many properties and for much longer than the Association. Therefore, given that ultimately demolishing properties has nothing to do with having maintained unsafe conditions, the City cannot waive fines for PRR unless it also waives fines for other property owners who the City has penalized for maintaining unsafe conditions.

124. "Finding no rational relationship to any of the articulated purposes of the [City], we are left with the more obvious illegitimate purpose," *Craigmiles v. Giles*, 312 F.3d 220, 228 (6th Cir. 2002), to compel people to sell their properties to a private developer. This is the only conceivable objective for the City's policy towards property owners in Pleasant Ridge—anything else is mere "fantasy." *St. Joseph Abbey*, 712 F.3d at 223.

125. Using selective code enforcement to compel Plaintiffs to sell their property is not legitimate. *Thorncreek Apartments III, LLC v. Vill. of Park Forest*, 970 F. Supp. 2d 828, 842 (N.D. Ill. 2013) (denying City's motion for summary judgment on equal-protection claim where

plaintiff had produced evidence that the city had selectively targeted the plaintiff for code enforcement in order to compel the plaintiff to sell its property); *see also Forseth v. Vill. of Sussex*, 199 F.3d 363, 371 (7th Cir. 2000).

126. If there were any doubt about the illegitimacy of the City's efforts to compel property transfers to a private developer, Indiana's eminent-domain reforms settle the matter in favor of Plaintiffs. In 2005, the United States Supreme Court held, in *Kelo v. City of New London*, 545 U.S. 469 (2005), that the Fifth Amendment to the Constitution permits government to take private property for the mere purpose of promoting economic development. Less than a year later, Indiana enacted a comprehensive reform statute rejecting the *Kelo* decision as a matter of state law. Ind. Code. § 32-24-4.5-7. The statute prohibits the transfer of property seized by eminent domain to other private parties except under narrow and enumerated circumstances. Ind. Code. § 32-24-4.5-7.

127. Under the new law, the fact that a property happens to be located in "an area needing redevelopment" is not a justification for transferring it to another private party. Rather, there must be a serious problem with the specific parcel at issue, such as the parcel containing "a structure that is unfit for human habitation." Ind. Code. § 32-24-4.5-7(B).

128. The prohibition on transfers to private parties persists for 30 years after eminent domain is used. Ind. Code. § 32-24-4.5-1(c).

129. Indiana has therefore rejected the kinds of compelled transfers that the City is attempting in this case.

130. On the record before the court, I find that the Plaintiffs are likely to prevail on their Equal Protection claim.

Plaintiffs Are Likely to Prevail on Their Indiana Equal Privileges or Immunities Claim

131. The Indiana Equal Privileges or Immunities Clause requires an analysis that is "separate" and distinct from federal equal-protection analysis. *Worman Enters., Inc. v. Boone Cty. Solid Waste Mgmt. Dist.*, 805 N.E.2d 369, 381 (Ind. 2004). Under the Equal Privileges or Immunities Clause, Ind. Const. art. I, § 23, there are no varying levels of scrutiny. *Morrison v. Sadler*, 821 N.E.2d 15, 21 (Ind. Ct. App. 2005). Nor is there a "similarly situated" requirement. There is just one test: When the government treats classes of people differently, the "disparate treatment...must be reasonably related to inherent characteristics which distinguish the unequally treated classes." *Collins v. Day*, 644 N.E.2d 72, 80 (Ind. 1994).

132. As explained above, the relevant Collins classes are (1) the Plaintiff property owners, who wish neither to sell nor demolish their houses, and (2) the developer, who does plan to demolish houses. The differential treatment is that one class (Plaintiffs) is subjected to extraordinarily vigorous property-code enforcement, while the other (the developer) is subjected to essentially no enforcement.

133. In determining whether differential treatment is justifiable, "the legislative purpose may be considered." *Paul Stieler Enters., Inc. v. City of Evansville*, 2 N.E.3d 1269, 1275 (Ind. 2014). In this case, the purpose is straightforward: The PMC declares that its purpose is "to ensure public health, safety and welfare in so far as they are affected by the continued occupancy and maintenance of structures and premises." PMC § 101.3.

134. The differential treatment in this case cannot be justified by any concern for "public health, safety and welfare." In fact, the differential treatment actually works against that goal by penalizing property owners, such as the Plaintiff Association, who have diligently brought their properties into compliance with the PMC, while giving a free pass to the developer, who has continued to rent out properties with acknowledged PMC violations.

135. The inherent differences in the two *Collins* classes—whether property owners plan to eventually demolish their properties—has nothing to do with whether these property owners are providing safe housing, which is the objective of the PMC. *See Paul Stieler*, 2 N.E.3d at 1275 ("In comparing the disparate treatment...to the inherent differences of the two classes...the legislative purpose for consideration is public health, not economic advantage to the City.").

136. As under the federal constitution, the equal-protection problem extends to the City's policy, as reflected in its agreement with PRR and the testimony of Mayor Hall, that a property owner must pay fines unless the property is demolished. If a property owner refuses to demolish a property, then, under City policy, the fines cannot be waived. This is irrational. The purpose of fines is to penalize a property owner for maintaining unsafe conditions in the Pleasant Ridge neighborhood. Therefore, the ultimate demolition of the property is irrelevant. Demolition does not alter the fact that the property owner allowed unsafe conditions to exist. In the case of PRR, it owns dozens of properties with daily accumulating fines now in the many millions of dollars.

137. The City cannot rationally penalize Plaintiff Association (or any other Pleasant Ridge property owner) for having maintained unsafe conditions in Pleasant Ridge while simultaneously waiving fines for a property owner like PRR that has allowed unsafe conditions to persist in the neighborhood in many properties and for much longer than the Association. Therefore, given that ultimately demolishing properties has nothing to do with having maintained unsafe conditions, the City cannot waive fines for PRR unless it also waives fines for other property owners who the City has penalized for maintaining unsafe conditions.

138. Accordingly, I find that the Plaintiffs are likely to prevail on their Indiana Equal Privileges and Immunities Claim.

Indiana's Per Se Rule

139. Indiana has a per se rule requiring the Court to issue a preliminary injunction when a plaintiff establishes the likelihood of succeeding on the merits of a claim that the government is violating the law. *E.g., State v. Econ. Freedom Fund*, 959 N.E.2d 794, 804 (Ind. 2011).

140. Here, Plaintiffs have demonstrated a likelihood of success on the merits of their statutory claims under the PMC, as well as a likelihood of success on the merits of their federal and state equal-protection claims. Having accomplished this, the Court is required to issue the preliminary injunction.

141. Furthermore, the result would be the same even if the per se rule did not exist. The Court will now analyze each additional element of preliminary injunctive relief.

Irreparable Harm

142. The loss of real property is an irreparable harm. *Carpenter Tech. Corp. v. City of Bridgeport*, 180 F.3d 93, 97 (2d Cir. 1999).

143. Plaintiffs and Plaintiff Association's members stand to lose their real property in Pleasant Ridge if the City issues fines against them similar to the immediate, daily fines it issued against the Association itself and other Pleasant Ridge landlords.

144. The Mayor and other City officials have made it clear that the ultimate objective of Mayor Hall's administration is the complete destruction of the homes in Pleasant Ridge, including the homes owned by the Plaintiffs and members of Plaintiff Association. The City partnered formally with the developer John Neace in 2014 to accomplish that goal as part of a

plan to obtain money from the State's Blight Elimination Program. Since the demise of that 2014 effort, Mayor Hall and others under his supervision have not just been in regular contact with Mr. Neace and his employee running PRR, but they have also coordinated with Mr. Neace to enable PRR to sweep up roughly 150 Pleasant Ridge properties in a few months. The Court finds that Mayor Hall's communications with Mr. Neace, including the Mayor stating that he is nervous when making decisions affecting Mr. Neace's money without sufficient input from Mr. Neace, indicate deliberate and conscious coordination in furtherance of the City's intent to destroy Pleasant Ridge.

145. The evidence supports a preliminary finding that the Mayor told Plaintiffs Ellen and David Keith of his plan to use code enforcement to compel the sale of property from Pleasant Ridge homeowners to a private developer. The Mayor publicly stated after the filing of the instant lawsuit that inspections would continue. In April 2017, the City Council ratified a formal development agreement, that was shortly before ratified by the Charlestown Redevelopment Commission, with Springville Manor, LLC, an entity owned by John Neace, and that agreement called for an expansion of the inspection program to owner-occupied homes. 2017-R-2, Ex. 3, ¶ 17.

146. During the hearing, Plaintiff Barnes testified that she had not yet been inspected by the City and had not received any notices of violation under the property-maintenance code. Those facts are not in dispute. Nevertheless, the Court finds that the City has plainly indicated its intention to implement the same code enforcement program against the owner-occupied homes like Ms. Barnes.

147. Plaintiffs stand to lose their homes if the City carries out its announced policy. Plaintiffs would have to sell their properties in all likelihood at a significant loss—leaving them unable to buy any home anywhere in Charlestown—or tear them down.

148. The loss of a neighborhood and the community and friendships it brings is also an irreparable harm. Many residents of Pleasant Ridge have lived in their homes for years and enjoy the communal bonds they have with their neighbors, and the support they provide each other. If these residents lose their Pleasant Ridge homes they would be unable to reestablish the same networks, bonds, and support system elsewhere.

149. Plaintiffs and other Association members have suffered stress and loss of well-being because of the well-founded fear of losing their homes and their neighborhood, and will continue to so suffer, if the City continues to issue fines in violation of PMC and U.S. and Indiana Constitutions.

Balance of Harm

150. Plaintiffs have demonstrated they are likely to succeed on the merits because the City has violated its own ordinance and the federal and state constitutions. As discussed earlier, under the per se rule, the balance of harm weighs in Plaintiffs' favor.

151. Even if the per se rule did not apply, Plaintiffs have demonstrated that the balance of harm weighs in their favor.

152. Plaintiffs' requested relief will not prevent the City from using code enforcement in Pleasant Ridge. It will merely require the City to obey its own PMC, and to treat all property owners in Pleasant Ridge equally.

153. The City has numerous tools at its disposal under both the UBL and the PMC other than issuing immediate fines. These tools will not be denied to the City for legitimate code enforcement if this Court issues a preliminary injunction.

154. Therefore, no harm will come to the City if this Court issues a preliminary injunction.

155. If this Court does not issue a preliminary injunction Plaintiffs will continue to suffer harm, through the City's issuance of fines that violate the PMC and the state and federal constitutions. Plaintiffs may have to pay those illegal fines, payment of which could jeopardize their ability to keep their properties.

The Public Interest

156. Plaintiffs have demonstrated they are likely to succeed on the merits because the City has violated its own ordinance and the federal and state constitutions. As discussed earlier, under the per se rule, the balance of harm weighs in Plaintiffs' favor.

157. Even if the per se rule did not apply, Plaintiffs have demonstrated that public policy favors that this Court issue a preliminary injunction.

158. Public policy favors an order requiring the City to follow local ordinances, state law, and the U.S. and Indiana Constitutions.

159. Public policy does not favor the City issuing unlawful fines for violations of a property-maintenance code in an effort to force property owners to sell their properties. The purpose of property-maintenance codes is to force property owners to improve their properties in order to protect health and safety, not to force owners to sell their properties.

160. The City's legitimate public-policy goals would not be impeded by a preliminary injunction. The City has numerous tools at its disposal under both the Unsafe Building Law and

the Code other than issuing immediate fines. These tools will not be denied to the City for legitimate code enforcement if this Court issues a preliminary injunction.

The Scope of the Preliminary Injunction

161. As reflected in the order to be filed contemporaneously with the Court's Findings of Fact and Conclusions of Law, a preliminary injunction shall be issued with the following terms:

162. The City shall enforce its property-maintenance code, 2008-OR-1, in a manner consistent with the plain language of the PMC. Pursuant to the PMC's language, the City shall only issue fines against a property owner in the following manner:

a. In cases where a property owner appeals an order within 20 days, the City, through the Board of Public Works and Safety, shall provide a meaningful right of appeal, and shall only fine the property owner if it determines that the property owner has willfully failed to comply with a notice of violation within a reasonable time;

b. In all cases, the City shall give property owners reasonable time to comply with a notice of violation. As the PMC does not define "reasonable time," and as the City has opted to implement certain provisions of the UBL, and cites the UBL in it's Citation, the Court finds that between 10 to 60 days, depending on the violation and the good-faith effort of the property owner to cure, would be a reasonable time to comply;

c. In cases where a property owner does not appeal an order within 20 days, the City, through its enforcement authority, shall only impose a fine after the property owner has failed or refused to comply with the order within a reasonable time.;

163. The City shall enforce its property-maintenance code, 2008-OR-1, in a manner consistent with the plain language of the ordinance, and, pursuant to its plain language, shall

allow property owners a reasonable time to comply with a notice of violation before they are sanctioned in any way, including before they are fined;

164. The City shall not fine property owners in Pleasant Ridge, or seek to collect fines against property owners in Pleasant Ridge, to a greater degree than it does against Pleasant Ridge Redevelopment, LLC (or any other entity controlled by a private developer). Specifically, if the City waives fines for properties owned, or that were owned until they were demolished, for Pleasant Ridge Redevelopment, LLC, then it must waive fines imposed on other property owners in Pleasant Ridge such as Plaintiff Association;

165. The Order shall take immediate effect and remain in place until modified by the Court or replaced by the terms of a final judgment in this case.

ALL OF WHICH IS SO FOUND AND ORDRED THIS 4th DAY OF DECEMBER, 2017.

/s/ Jason M. Mount
HON. JASON M. MOUNT, SPECIAL JUDGE
Judge of the Scott County Circuit Court