



ORDER OF DENIAL

TO: St. Joseph County Council
c/o Michael A. Trippel, Council Attorney
227 W Jefferson Boulevard
South Bend, IN 46601

Dave Cherrone, Fire Marshal
Clay Fire Territory
18355 Auten Road
South Bend, IN 46637

FROM: Douglas J. Boyle, Director of the Fire Prevention and Building Safety Commission
Indiana Department of Homeland Security

DATE: Monday, February 12, 2018

RE: Order Denying Approval of Ordinance No. 77-17 (St. Joseph County, Indiana)

Pursuant to Indiana Code § 22-13-2-5 and Indiana Code § 22-13-2-5.5, the Fire Prevention and Building Safety Commission, at its Thursday, February 8, 2017 meeting, **DENIED** approval of the above listed ordinance. This ordinance was denied for the following defect(s):

1. **Section § 92.18(b):** Ordinance No. 77-17's definition of "single and multiple family dwelling rental unit" includes both Class 1 and Class 2 structures. The 2014 Indiana Building Code, under 675 IAC 13-2.6-10(uu), specifically deletes out Section 908.7 of the 2012 International Building Code in its entirety, to remove the requirement of carbon monoxide alarms in Group I or R occupancies located in a building containing fuel burning appliances or in a building which has an attached garage. For this reason, Ordinance No. 77-17 conflicts with the intent of the Commission to not require carbon monoxide detectors in Class 1 structures.
2. **Section § 92.18(c):** Pursuant to IC 22-13-2-6, ordinances adopted by political subdivisions that govern the construction of a building or other structure do not apply to an industrialized building system or a mobile structure that is certified under IC 22-15-4. This ordinance would appear to be regulating mobile structures certified pursuant to IC 22-15-4, and this is not permitted.
3. **Section § 92.19:** Ordinance No. 77-17's intent to require carbon monoxide detectors in "all single and multiple family dwelling rental units and all mobile home rentals" conflicts with

the intent of the Commission to not require carbon monoxide detectors in Class 1 structures.

4. **Section § 92.19:** 675 IAC 675 12-4-11 states that any building or structure lawfully in existence at the time of the adoption of any rule of the commission for new construction may have its existing use or occupancy continued without having to be altered to comply with such a rule. Ordinance No. 77-17's intent to require carbon monoxide detectors in "all single and multiple family dwelling rental units and all mobile home rentals" conflicts with the Commission's intent to prevent buildings currently in existence from having to comply with new standards each time new rules are promulgated. An existing building or structure is only required to comply with the Commission's rules for new construction if there is a change of use or occupancy to the building or structure, as established under 675 IAC 12-4-11; or if an addition or alteration is made to the building or structure, as established under 675 IAC 12-4-12.
5. **Section § 92.19** also seems to conflict with itself. The first part of the provision requires carbon monoxide detectors in all single and multiple family dwelling rental units and all mobile home rentals. The last part of the provision is more descriptive in that it requires carbon monoxide detectors in any single and multiple family dwelling rental unit or mobile home rental *which has a fireplace, wood-burning stove, attached garage, or fossil fuel-burning appliance.*
6. **Section § 92.19**, which states that this requirement shall be effective after December 31, 2017, is also in direct conflict with the rules of the Commission. Ordinances related to building and fire safety laws are not effective until they are approved by the Commission.
7. **Section § 92.98:** Subsection 3 of this section states that this Ordinance shall be in full force and effect beginning ninety (90) days after its approval by the Indiana Fire Prevention and Building Safety Commission. This is not in conflict with the rules of the Commission, but it does conflict with the provision mentioned above in Section § 92.19.

APPEAL RIGHTS

This order may be appealed in accordance with Indiana Code § 4-21.5-3-7. To qualify for administrative review of this order, you must submit, by U.S. Mail or personal service, a Petition for Review in writing that complies with all of the following requirements:

1. The Petition for Review must state facts demonstrating that you are:
 - a. a person to whom the order is specifically directed;
 - b. aggrieved or adversely affected by the order; or
 - c. entitled to review under any law.

2. The Petition for Review must be filed with the chairperson or secretary of the ultimate authority for the agency issuing the order. If filed by U.S. mail, as opposed to personal service, please address the mailing as follows:

Indiana Department of Homeland Security
Fire Prevention and Building Safety Commission
c/o Secretary
302 W. Washington Street, Rm. E208
Indianapolis, IN 46204

3. The Petition for Review must be filed within fifteen (15) days after you are given notice of this order. Timeliness is computed by the methods described in Indiana Code § 4-21.5-3-2. Generally, the following rules apply, but review I.C. § 4-21.5-3-2 to ensure timeliness for your specific situation.
 - a. If you are served by United States mail, you will have three (3) additional days to petition for review – extending the period to eighteen (18) days – this time period will be calculated from the date the order was deposited in the United States mail.
 - b. In calculating timeliness, the first day is **not** included, but the last day is.
 - c. If the deadline falls on a: (1) Saturday; (2) Sunday; (3) legal holiday under a state statute; or (4) other day that our office is closed, the deadline will be extended until the first day that does not fall on a: (1) Saturday; (2) Sunday; (3) legal holiday under a state statute; or (4) other day that our office is closed.
 - d. The Petition for Review is deemed filed on the date of the postmark on the envelope containing the Petition for Review or the date the Petition for Review is personally delivered to the above address, whichever occurs first.

Please be advised, if a petition for review is granted any person may obtain notices of prehearing conferences, preliminary hearings, hearings, stays, and any orders disposing of the proceedings by sending a request to receive such notices to the address listed in 2, above.

If you comply with these three requirements, your Petition for Review will be granted and will be assigned to an administrative law judge for review. If a Petition for Review is not timely filed, then this order will become final and you must comply with its requirements.

You may also request an opportunity to informally discuss this matter. However, a request to informally discuss, or actual informal discussion, does not extend the deadline for filing your Petition for Review and, consequently, any request should be made promptly, preferably by telephone, upon receipt of the Order. If you have any questions regarding this order, please contact our Legal Department by phone at (317) 234-9515 or by email at jguedel@dhs.in.gov.

DJB
encl.
cc: File

RECEIVED
IDHS

NOV 27 2017

LEGAL AND CODE
SERVICES

Bill No. 81-17
As Amended 11.14.17

ORDINANCE NO. 77-18-17

AN ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL AMENDING TITLE IX OF
THE ST. JOSEPH COUNTY CODE BY AMENDING CHAPTER 92,

CARBON MONOXIDE DETECTORS

STATEMENT OF PURPOSE
AND INTENT

The purpose and intent of this Ordinance is to amend Title IX of the St. Joseph County Code so as to add thereto provisions requiring the installation and maintenance of carbon monoxide detectors within all single and multiple family rental dwelling units within St. Joseph County, and to adjust the title of Chapter 92 accordingly.

NOW, THEREFORE, IT IS ORDAINED BY THE ST. JOSEPH COUNTY COUNCIL,
THAT:

SECTION 1. The St. Joseph County Code is hereby amended by amending the title of Chapter 92 "Fire Protection and Prevention", to read "Community Risk Reduction", and by adding the following sections:

- 92.18 Definitions
- 92.19 Carbon Monoxide Detectors required
- 92.20 Location of Carbon Monoxide Detectors
- 92.21 Installations
- 92.22 Maintenance
- 92.23 Responsibility
- 92.24 Certificate of Compliance
- 92.98 Penalties

§ 92.18 DEFINITIONS

(a) CARBON MONOXIDE DETECTOR shall be defined as a device that detects the presence of the carbon monoxide (CO) gas in order to prevent carbon monoxide poisoning.

(b) SINGLE AND MULTIPLE FAMILY DWELLING RENTAL UNIT shall be defined as any building that contains living quarters for rent or lease for occupancy, and shall include hotels, motels, boarding houses, sleeping room houses, building or mixed occupancy, having any residential units, nursing homes, convalescent homes, licensed half-way houses, or lodging houses.

(c) MOBILE HOME RENTAL shall be defined as any mobile home or trailer occupied by or offered for occupancy to an individual or individuals as a residence on a rental basis.

(d) SLEEPING AREA shall be defined as the area of a unit in which bedrooms or sleeping rooms are located. Bedrooms or sleeping rooms separated by another use area such as a kitchen or living room are separate sleeping areas but bedrooms or sleeping rooms separated by a bathroom are not separate sleeping areas.

§ 92.19 CARBON MONOXIDE DETECTORS REQUIRED

All single and multiple family dwelling rental units and all mobile home rentals shall be equipped with carbon monoxide detectors. For all such buildings occupied for residential use for which rent or lease is collected, this requirement shall be effective after December 31, 2017. And, any single and multiple family dwelling rental unit or mobile home rental which has a fireplace, wood-burning stove, attached garage, or fossil fuel burning appliance, shall have at least one (1) operational carbon monoxide detector per unit.

§ 92.20 LOCATION OF CARBON MONOXIDE DETECTORS

Carbon Monoxide Detectors shall be located per manufacturer's recommendations.

§ 92.21 INSTALLATIONS

Carbon Monoxide Detectors shall be installed per manufacturer's specifications.

§ 92.22 MAINTENANCE

It shall be unlawful for any person to tamper with or remove any carbon monoxide detector except when it is necessary for maintenance or inspection purposes. Any carbon monoxide detector removed for repair or replacement shall be reinstalled or replaced so that it is in place during normal sleeping hours. At every change of tenant in every single and multiple family dwelling unit or mobile home rental, carbon monoxide detectors shall be tested to determine that they are in operable condition.

§ 92.23 RESPONSIBILITY

Every owner, manager or agent of any single and multiple family dwelling rental unit or mobile home rental shall be responsible for the installation and maintenance of all carbon monoxide detectors. This requirement applies to carbon monoxide detectors required by any state or federal law as well as by this ordinance.

§ 92.24 CERTIFICATES OF COMPLIANCE

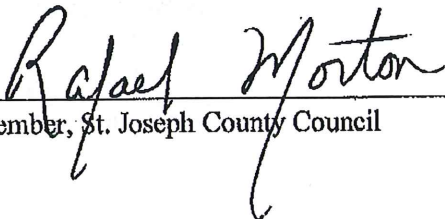
Between January 1 and January 31 of each year, the owner, manager or agent of each dwelling unit and mobile home in which a carbon monoxide detector has been installed shall certify, in writing, on forms prescribed by the County Building Department, to the Fire Inspector or Community Risk Reduction Division of the local Fire Department where the residence is located, that the required maintenance has been performed on all detectors in the owner's, manager's or agent's units and that the detectors are in good working condition as of the date of certification. Each owner, manager or agent shall certify to each new occupant of any dwelling unit and mobile home covered by this Ordinance that all carbon monoxide detectors required have been installed and are in proper working condition.

§ 92.98 PENALTIES

Any person who shall violate any of the provisions of the Code hereby adopted or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken or who shall fail to comply with such an order as affirmed or modified by the Chief of the local Fire Department or by the St. Joseph County Building Department or by a Court of competent jurisdiction, may be fined up to \$100.

SECTION 2. The provisions of this article of this chapter are severable and if any sentence, section or other part of this article shall be found invalid, such invalidity shall not affect the remaining provisions and the remaining provisions shall continue to be in full force and effect.

SECTION 3: This Ordinance shall be in full force and effect beginning ninety (90) days after its approval by the Indiana Fire Prevention and Building Safety Commission.


Member, St. Joseph County Council

Bill No. 81-17

No Amended

AMENDMENT NO. _____

ORDINANCE NO. 7718

revised to 77-17

AN ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL AMENDING TITLE IX OF THE ST. JOSEPH COUNTY CODE BY AMENDING CHAPTER 92, CARBON MONOXIDE DETECTORS

PETITIONER(S): MARK CATANZARITE, DAVE CHERRONE AND DOT KESLING

This bill came before the St. Joseph County Council the 14 th day of November, 2017, and was voted to duly pass/not to pass, this Ordinance.

Rafael J. Porter
President, County Council

VOTES

YES 7

NO 2

Against: Mr. Telloyan ; Mr. OBrien

ATTEST:

M. J. ...
Auditor, St. Joseph County

Presented by me to the Board of Commissioners of the County of St. Joseph, Indiana, this 15 th day of November, 2017, at the hour of 2 o'clock P.M.

This Ordinance approved and signed by the Board of County Commissioners of St. Joseph County, Indiana, on the 21 th day of November, 2017, at the hour of 10 o'clock A. M.

Amber T. ...
President, County Commissioners

Abigail ...
Vice President, County Commissioners

Don ...
Member, County Commissioners