

ORDINANCE NO. 2023-__

AN ORDINANCE TO AMEND ORDINANCE NO. 2008-02-305 IN ITS ENTIRETY IN ORDER TO ADOPT REGULATIONS FOR THE ESTABLISHMENT OF A FLOOD DAMAGE PREVENTION PROGRAM FOR THE CITY OF TONTITOWN, ARKANSAS.

WHEREAS, the Legislature of the State of Arkansas has in Ark. Code Ann. § 14-268-101 et seq., delegated the responsibility of local governmental units to adopt regulations to minimize flood losses; and

WHEREAS, Ordinance No. 2008-02-305 was adopted on May 16, 2008 by the Tontitown City Council; and

WHEREAS, the Federal Emergency Management Agency (FEMA) has identified Special Flood Hazard Areas of Tontitown in the current scientific and engineering report entitled "The Flood Insurance Study (FIS) for Washington County, Arkansas and Incorporated Areas," dated January 25, 2024, with an effective Flood Insurance Rate Map (FIRM) dated January 25, 2024; and

WHEREAS, these Special Flood Hazard Areas are subject to periodic flooding events that result in loss of life and property, pose health and safety hazards, disrupt commerce and governmental services, and cause extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare; and

WHEREAS, these periodic flooding events are exacerbated by the cumulative effect of floodplain developments which cause an increase in flood heights and velocities, and by the placement of inadequately elevated, inadequately floodproofed or otherwise unprotected structures or uses vulnerable to floods into Special Flood Hazard Areas. Such structures or uses are inherently hazardous to other lands because of their adverse impact on flooding events; and

WHEREAS, the City Council has determined that it is in the best interest and benefit of the community to amend Ordinance No. 2008-02-305 in its entirety in order to adopt regulations for the establishment of the Flood Damage Prevention Program, attached hereto as Exhibit "A", for the City of Tontitown.

NOW, THEREFORE, BE IT ENACTED, by the City Council of the City of Tontitown, Arkansas:

Section 1. The City of Tontitown adopts “The Flood Insurance Study (FIS) for Washington County, Arkansas and Incorporated Areas,” dated January 24, 2024, with an effective Flood Insurance Rate Map (FIRM) dated January 25, 2024.

Section 2. STATEMENT OF PURPOSE The purpose of this ordinance is to promote the public health, safety and general welfare, to prevent adverse impacts from any floodplain development activities, and to minimize public and private losses due to flooding events in identified Special Flood Hazard Areas. This ordinance advances the stated purpose through provisions designed to:

- A. Protect human life and health;
- B. Protect natural floodplains against unwise development;
- C. Eliminate adverse impacts of necessary floodplain development;
- D. Minimize expenditure of public monies on flood control projects;
- E. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- F. Minimize prolonged business interruptions due to flooding events;
- G. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in Special Flood Hazard Areas;
- H. Minimize future flood blight areas to help maintain a stable tax base; and
- I. Provide for notice to potential buyers when property is in a Special Flood Hazard Area.

Section 3. LANDS TO WHICH THIS ORDINANCE APPLIES The ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction of the City of Tontitown.

Section 4. METHODS OF REDUCING FLOOD LOSSES This ordinance uses the following methods to accomplish the stated purpose:

- A. This ordinance restricts or prohibits structures or uses in Special Flood Hazard Areas that adversely impact health, safety or property during flooding events;
- B. This ordinance requires protection against flood damage for structures

or uses vulnerable to floods at the time of initial construction, or after substantial improvement of the structure, or after substantial damage has occurred;

- C. This ordinance controls the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation and transport of flood waters;
- D. This ordinance controls floodplain development (structural development, placement of manufactured structures, clearing, grading, mining, drilling, dredging, placement of fill, excavating, watercourse alteration, drainage improvements, roadway or bridge construction, individual water or sewer installations and other activities) which may increase flood damage by increasing flood elevations, flood water velocities, or flood discharge patterns;
- E. This ordinance regulates the construction of flood barriers which unnaturally divert floodwaters or which may adversely impact other lands.

Section 5. FLOOD DAMAGE PREVENTION CODE ADOPTED BY REFERENCE. The City has published notice as required by law to adopt the Flood Damage Prevention Code as a technical code by reference. The City has had and shall continue to have three copies of the Flood Damage Prevention Code on file in the office of the City Clerk for inspection and copying by the public. Therefore, the "Flood Damage Prevention Code for the City of Tontitown, Arkansas," dated January 25, 2024, attached hereto as Exhibit "A", is adopted by reference. The code shall include:

- ARTICLE 1 DEFINITIONS
- ARTICLE 2 ADMINISTRATION
- ARTICLE 3 PROVISIONS FOR FLOOD HAZARD REDUCTION

Section 6. ABROGATION AND GREATER RESTRICTIONS This ordinance does not repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. Whenever there is a conflict or overlap between this ordinance and another ordinance, easement, covenant, or deed restriction, the instrument with the more stringent restrictions applies.

Section 7. INTERPRETATION In the interpretation and application of this ordinance, all provisions must:

- A. Be considered as minimum requirements;
- B. Be liberally construed in favor of the governing body; and

- C. Be deemed to neither limit nor repeal any other powers granted under State statutes.

Section 8. WARNING AND DISCLAIMER OF LIABILITY The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes. Documented scientific and engineering data form the basis for these requirements. On rare occasions, flooding events greater than those considered for this ordinance will occur. In addition, flood heights may increase over time due to man-made or natural causes. This ordinance does not imply that land outside Special Flood Hazard Areas will be free from flooding, nor that strict adherence to this ordinance protects uses permitted within Special Flood Hazard Areas from all flood damages. This ordinance specifically does not create liability on the part of the community, nor any official or employee of the community, for any flood damages that result while strictly following this ordinance, or from any lawful administrative decision made under the provisions of this ordinance.

Section 9. COMPLIANCE Constructing, locating, substantially altering or changing the use of any structure or land after the effective date of this ordinance requires full compliance with the provisions of this ordinance and all other applicable regulations.

Section 10. PENALTY FOR NON-COMPLIANCE Flood hazards are reduced by compliance with the provisions of this code. Accordingly, enforcement of this ordinance discourages non-compliance and is a recognized mechanism for flood hazard reduction. The Floodplain Administrator must enforce the provisions of this ordinance and is authorized to:

- A. Issue cease and desist orders on non-compliant floodplain development projects;
- B. Issue citations for non-compliance;
- C. Request that FEMA file a 1316 Action (Denial of Flood Insurance) against non-compliant properties; and
- D. Take any other lawful action necessary to prevent or remedy any instance of non-compliance with the provisions of this ordinance.
 - (1) It shall be a misdemeanor to violate or fail to comply with any provision of this ordinance.
 - (2) A violation of this ordinance shall be penalized as set forth in Section 10.99: General Penalty of the Tontitown Municipal Code.

Section 11. SEVERABILITY If any court of competent jurisdiction finds that any section, clause, sentence, or phrase of this ordinance is invalid or unconstitutional, that finding in no way affects the validity of the remaining portions of this ordinance.

Section 12. REPEALER Any ordinance in conflict herewith or in conflict with the Code hereby adopted is hereby repealed.

Section 13. EFFECTIVE DATE This ordinance shall be in full force and effect from and after January 25, 2024.

PASSED AND APPROVED this ____ day of October 2023.

APPROVED:

Angela Russell, Mayor

ATTEST:

Rhonda Ardemagni, City Clerk-Treasurer
(SEAL)