

# ARTICLE 1500

## FLOOD DAMAGE PREVENTION

### SECTION 1500.1 STATUTORY AUTHORITY

(Ordinance #2007-103, 8-28-2007)

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. Therefore, the City Council of the City of Bentonville, Arkansas, does hereby ordain as follows:

### SECTION 1500.2 FINDINGS OF FACT

- A. The Federal Emergency Management Agency (FEMA) has identified Special Flood Hazard Areas of the City of Bentonville in the current scientific and engineering report entitled "The Flood Insurance Study (FIS) for Benton County, Arkansas," dated September 28, 2007 with an effective Flood Insurance Rate Map (FIRM) dated September 28<sup>th</sup>, 2007.
- B. 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.
- C. 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.

### SECTION 1500.3 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 1500.4 LANDS TO WHICH THIS ORDINANCE APPLIES

The ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction of the City of Bentonville, Arkansas.

### SECTION 1500.5 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

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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 1500.6 FLOOD DAMAGE PREVENTION CODE ADOPTED BY REFERENCE**

There is hereby adopted by reference a “**Flood Damage Prevention Code for the City of Bentonville, Arkansas,**” dated August 28, 2007. The code shall be available for inspection and copying by any person during normal office hours.

**SECTION 1500.7 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 1500.8 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 1500.9 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 1500.10 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 1500.11 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.

- A. The Floodplain Administrator and his or her designee must enforce the provisions of this ordinance and is authorized to:
- B. Issue a stop work order on non-compliant floodplain development projects;
- C. Issue citations for non-compliance;

- D. Request that FEMA file a 1316 Action (Denial of Flood Insurance) against non-compliant properties; and
- E. Take any other lawful action necessary to prevent or remedy any instance of non-compliance with the provisions of this ordinance.
  - (1) It is a misdemeanor to violate or fail to comply with any provision of this ordinance.
  - (2) Any person found, in a court of competent jurisdiction, guilty of violating this ordinance is subject to fines of not more than \$500 per day for each violation; in addition the defendant is subject to payment of all associated court costs and costs involved in the case.

Administrator and approval by the appropriate board.

**3. Application.**

- a. Application Form. Completed and signed application form.
- b. Fee. Payment of fee as indicated on the application.

**4. Review and Approval.** Any Floodplain Development permit may not be completely reviewed until all associative documents and detailed study information has been made available to the Floodplain Administrator. Upon completion of the review a determination will be made to approve or deny the permit.

**SECTION 1500.12 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 1500.13 FEES**

The applicant shall pay the fee listed on the permit application, as adopted from time to time by City Council.

**SECTION 1500.14 PERMITS**

- 1. **Applicability.** Any 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 must be approved via the current Floodplain Development Permit Application prior to any work within the Special Flood Hazard Area.
- 2. **Exemptions.** No exemptions may be granted without a written request to the city Floodplain