

CITY OF VAN BUREN, ARKANSAS

ORDINANCE NO. 1-2009

BE IT ENACTED BY THE CITY COUNCIL, FOR THE CITY OF VAN BUREN, ARKANSAS, AN ORDINANCE TO BE ENTITLED:

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF A FLOOD DAMAGE PREVENTION PROGRAM FOR VAN BUREN; TO PROVIDE FOR SEVERABILITY; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

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 Federal Emergency Management Agency (FEMA) regulations to minimize flood losses; and

WHEREAS, the City of Van Buren has found that the purposes herein require immediate attention, for the protection of the health, welfare and safety of the inhabitants of the City of Van Buren, and as herein set out, an emergency exists and is hereby declared to exist, and this ordinance shall be and become effective immediately upon this passage and adoption by the City Council; and

WHEREAS, the City Council hereby finds that it is in the public interest to approve and adopt the language herein, as part of the City Code, in compliance with FEMA requirements.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF VAN BUREN, ARKANSAS, THAT:

SECTION 1: FINDINGS OF FACT - The following findings are adopted by the City Council for the City of Van Buren:

- A. The Federal Emergency Management Agency (FEMA) has identified Special Flood Hazard Areas of Van Buren in the current scientific and engineering report entitled "The Flood Insurance Study (FIS) for Crawford County, Arkansas," dated March 16, 2009, with an effective Flood Insurance Rate Map (FIRM) dated March 16, 2009.
- 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 flood-proofed 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 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 Van Buren, Arkansas

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 - There is hereby adopted by reference a “Flood Damage Prevention Code for Van Buren, Arkansas,” dated January 29, 2009. The code shall include:

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

REDUCTION

A copy of the referenced code shall be filed in the office of the City Clerk and shall be available for inspection and copying by any person during normal office hours.

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 NONCOMPLIANCE - 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.

- E. It shall be a misdemeanor to violate or fail to comply with any provision of this ordinance.
- F. 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.

SECTION 11: SEVERABILITY - The various provisions and parts of this Ordinance are hereby declared to be severable, and, if any section, clause, sentence, or phrase of this ordinance, is declared to be unconstitutional, inappropriate, or invalid by any court of competent jurisdiction, such holding shall not invalidate or affect the remainder of this Ordinance and to that extent the provisions hereto are declared to be severable.

SECTION 12: REPEALER CLAUSE - All ordinances, resolutions or other acts of the City in conflict with the terms hereof are repealed or amended to the extent of any such conflict

SECTION 13: EMERGENCY CLAUSE - It is hereby found and declared by Van Buren, Arkansas that severe flooding has occurred in the past within its jurisdiction and will certainly occur within the future; that flooding is likely to result in infliction of serious personal injury or death, and is likely to result in substantial injury or destruction of property within its jurisdiction; in order to effectively comply with minimum standards for coverage under the National Flood Insurance Program; and in order to effectively remedy the situation described herein, it is necessary that this ordinance become effective immediately.

Therefore, an emergency is hereby declared to exist, and this ordinance, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.

IN WITNESS WHEREOF, the City of Van Buren, Arkansas, by its City Council, did pass, approve, and adopt, by a vote of _____ for and _____ against, the foregoing Ordinance at its meeting held on the 29th day of January 2009.

Robert D. Freeman, Mayor

ATTESTED:

APPROVED AS TO FORM:

Barbie Curtis, City Clerk/Treasurer

N. Donald Jenkins, Jr., City Attorney