ORDINANCE NO. 2133

BE IT ENACTED BY THE CITY COUNCIL OF EUREKA SPRINGS, ARKANSAS, AN ORDINANCE TO BE ENTITLED: "**AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF A FLOOD DAMAGE PREVENTION PROGRAM FOR EUREKA SPRINGS AND FOR OTHER PURPOSES**."

SECTION 1. STATUTORY AUTHORITY

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 Eureka Springs, Arkansas, does hereby ordain as follows:

SECTION 2. FINDINGS OF FACT

A. The Federal Emergency Management Agency (FEMA) has identified Special Flood Hazard Areas of Eureka Springs in the current scientific and engineering report entitled "The Flood Insurance Study (FIS) for the Carroll County, Arkansas and Incorporated Areas," dated March 17, 2011, with an effective Flood Insurance Rate Map (FIRM) dated March 17, 2011.

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 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 4. LANDS TO WHICH THIS ORDINANCE APPLIES

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

SECTION 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 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 6. FLOOD DAMAGE PREVENTION CODE ADOPTED BY REFERENCE.

There is hereby adopted by reference a "**Flood Damage Prevention Code for Eureka Springs, Arkansas,**" **dated October 22, 2010** 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 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 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 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 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 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. 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;

D. 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.

SECTION 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.

APPROVED: _____
Mayor Morris Pate

PASSED: February 3, 2011

ATTEST: Ann Armstrong
City Clerk/Treasurer Ann Armstrong

I, the undersigned, _____, do hereby certify that the above is ~~a~~ the original 2/3/11

~~true and correct copy of an~~ ordinance duly adopted by the City Council of the City of Eureka Springs

at a regular meeting duly convened on February 3, 2011

_____

PROOF OF POSTING OF ORDINANCES

STATE OF ARKANSAS

COUNTY OF CARROLL

We, Mayor Morris Pate and City Clerk/Treasurer Ann Armstrong, do solemnly swear that as Mayor and City Clerk, respectively, of and for the City of Eureka Springs, Carroll County, Arkansas, that a certified copy of Ordinance No. 2133, has been posted on the City's website, www.cityofeurekasprings.org, and, on February 8, 2011, in the following places inside the corporate limits of the City: (1) City Hall, (2) Lovin' Oven Bakeria, (3) the Eureka Springs Public Library, (4) Hart's Family Center and (5) Bunch's Quik-Chek and that the Ordinance remained posted for thirty (30) days.

DATED this 8th day of February, 2011

Mayor

Ann Armstrong
City Clerk

OFFICIAL SEAL
DIANE DIRBA WILKERSON
NOTARY PUBLIC-ARKANSAS
CARROLL COUNTY
MY COMMISSION EXPIRES: 02-23-15

(SEAL)

Subscribed and sworn to before me on this 8 day of February, 2011.

Diane Dirba Wilkerson
Notary Public

My Commission Expires:

02-23-15

(SEAL)

AFFIDAVIT

STATE OF ARKANSAS

COUNTY OF CARROLL

The undersigned, as the duly elected, qualified and acting City Clerk/Treasurer within and for the City of Eureka Springs, Arkansas, does hereby certify that there is no newspaper published within the corporate limits of the City.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City this 7th day of February, 2011.

OFFICIAL SEAL
DIANE DIRBA WILKERSON
NOTARY PUBLIC-ARKANSAS
CARROLL COUNTY
MY COMMISSION EXPIRES: 02-23-15

(SEAL)

Ann Armstrong
City Clerk/Treasurer

Subscribed and sworn to before me on this 9th day of February 7, 2011.

Diane Dirba Wilkerson
Notary Public

My Commission Expires:

02-23-15

(SEAL)