

ORDINANCE NO. 2019-03-836

CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

**AN ORDINANCE AMENDING SECTION 150.005 PROCEDURES FOR CONSTRUCTION OF DWELLINGS OF CHAPTER 150: BUILDING REGULATIONS AND SECTION 153.080 AGRICULTURE AND RESIDENTIAL DISTRICTS; GENERAL OF CHAPTER 153: ZONING REGULATIONS OF THE TONTITOWN MUNICIPAL CODE IN ITS ENTIRETY IN ORDER TO CLARIFY AND AMEND REQUIREMENTS FOR ACCESSORY DWELLINGS OF THE CITY OF TONTITOWN AND DECLARING AN EMERGENCY**

**WHEREAS**, the City Council of Tontitown has adopted the Tontitown Municipal Code to clarify and amend requirements for construction of accessory dwellings or other building or structure within the city and as it has been amended from time to time and as was thereafter codified within in Section 150.005 PROCEDURES FOR CONSTRUCTION OF DWELLINGS of Chapter 150: BUILDING REGULATIONS and Section 153.080 AGRICULTURE AND RESIDENTIAL DISTRICTS; GENERAL of Chapter 153: ZONING REGULATIONS in the Tontitown Municipal Code; and

**WHEREAS**, the City Council of the City of Tontitown now finds it to be in the best interest of the citizens of the City of Tontitown to amend the Tontitown Municipal Code Section 150.005 PROCEDURES FOR CONSTRUCTION OF DWELLINGS of Chapter 150: BUILDING REGULATIONS and Section 153.080 AGRICULTURE AND RESIDENTIAL DISTRICTS; GENERAL of Chapter 153: ZONING REGULATIONS in its entirety to clarify and amend dwelling or other building guidelines and standards; and

**WHEREAS**, Ark.Code Ann. § 14-56-401 *et seq.* provides multiple bases for all cities in Arkansas to regulate placements construction and inspection of houses through the issuance and denial of permits, including specifically, but not limited to, the powers conferred to all cities by and through Ark. Code Ann. § 14-5-416; and

**WHEREAS**, having fully reviewed the proposed amendment, the Tontitown City Council has determined that Section 150.005 PROCEDURES FOR CONSTRUCTION OF DWELLINGS of Chapter 150: BUILDING REGULATIONS and Section 153.080 AGRICULTURE AND RESIDENTIAL DISTRICTS; GENERAL of Chapter 153: ZONING REGULATIONS, of the Tontitown Municipal Code should be revised and restated in its entirety as incorporated herein below.

## Exhibit "A"

### § 150.005 PROCEDURES FOR CONSTRUCTION OF DWELLINGS.

(A) From and after the passage of this section, and in accordance with the authority granted in A.C. § 14-56-416 and elsewhere in state law, it shall be unlawful for any person, firm or corporation to build, erect or construct any home, building or structure within the corporate limits of the City of Tontitown, Arkansas, except as hereinafter provided.

(B) Any person, firm or corporation desiring to build, erect or construct such home, dwelling, building or structure within the corporate limits of the City of Tontitown, Arkansas, shall make application for a building/zoning permit with the application to be filed with the City Building/Zoning Official of the City of Tontitown, Arkansas, and with such application to contain such information as may be required by the City Council of the City of Tontitown, Arkansas.

(C) The City Building/Zoning Official shall consider the application in relation to the ordinances and/or standards or regulations adopted by the City Council, and the City Building/Zoning Official shall have the sole discretion in either approving or denying the building/zoning permit applied for by the applicant.

(D) The standards or regulations heretofore mentioned shall be considered as adopted by the City Council when dated and signed by the Mayor and Recorder/Treasurer at any regular or special meeting of the City Council, and a copy of the guidelines and standards shall be on file with the City of Tontitown, Arkansas for inspection by any interested persons at reasonable times.

(E) *Minimum requirements for dwellings.*

(1) In no case shall a primary dwelling consist of less than 1,000 heated square feet of floor area.

(2) Accessory dwelling units (ADU) are allowed in certain zoning districts and subject to additional requirements found in 153.172. In no case shall an ADUs consist of less than 650 heated square feet of floor area, and can be no more than 67% of the size of the primary residence.

(3) All dwellings shall be constructed on a permanent foundation.

(4) All plumbing fixtures shall be connected to a sanitary sewer or to an approved private sewage disposal system.

(F) The Mayor of the City of Tontitown, Arkansas shall have the authority to delegate any of its authority or powers provided herein to any person in order to implement this section.

(G) This section shall apply to either new construction or improvements or additions to existing structures, the cost of which exceeds \$1,000; provided, however, that no permit shall be required for any improvements solely within the interior of any existing structure.

(H) The Mayor shall designate or employ a Building/Zoning Official and a Building Inspector to carry out the intent of this section.

(I) Any person receiving written notification from the City of Tontitown that he or she is in violation of the provisions of this section and any amendments thereto shall have a period of 30

days following the receipt of such notice in which to effect compliance or otherwise will upon conviction be subject to a fine in keeping with A.C. § 14-55-504 as amended by General Assembly of the State of Arkansas.

(J) It shall be unlawful for any person, firm or corporation to construct move any dwelling, home, buildings or other structures onto lands within the corporate limits of Tontitown, Arkansas, unless a building/zoning permit as provided for in this section shall have first been obtained. Violation of this section shall subject the violators to the same penalties as provided in this section.

(K) The Building/Zoning Administrator shall review each application for a building permit to determine its conformity with the flood hazard resolution and any other ordinance or resolution of the city, and the city shall not approve a building permit in the flood hazard area unless it complies with the requirements of the flood hazard resolution and the requirements of the flood insurance program.

(L) The City Council, by a majority vote, shall establish the fee schedule for issuance of a permit. This schedule may be amended by the City Council from time to time by the same vote. Every building/zoning permit shall become null and void if construction or installation authorized by the permit is not commenced within six months from the date of such permit, or if the construction or installation is abandoned for a period of six months once the construction or installation is commenced. No home, dwelling or building shall be occupied before a certificate of occupancy is issued by the building/zoning official.

(M) Any person aggrieved by the issuance of denial of a building/zoning permit shall be submitted by the aggrieved party in writing to the Building/Zoning Official within ten days of the final decision or issuance. Such appeal shall state the reasons for the appeal, and such appeal shall be heard by the Board of Zoning Adjustments. No appeal submitted after the ten day period shall be considered by the Board of Zoning Adjustments.

(Ord. 46, passed 9-25-68; Am. Ord. 64, passed 3-2-76; Am. Ord. 2016-08-591, passed 8-3-16; Am. Ord. 2017-12-667, passed 12-5-17; Am. Ord. 2018-11-817, passed 11-6-18)

#### **§ 153.080 AGRICULTURE AND RESIDENTIAL DISTRICTS; GENERAL DESCRIPTION.**

(A) Counting the agriculture district, which is considered to be a very low density single-family district, and acts to serve as a "holding" zone for subsequent higher density consideration, there are eight districts designed to meet present and future housing needs; to protect the character of, and property values in, residential areas; to encourage a suitable environment for family life; and to provide choice in density, as well as in type of housing. Five of the districts are for low-density single-family uses, and are intended to be defined and protected from the encroachment of uses not performing a function necessary to the low density, residential environment. One district is intended for medium-density single-family uses, and one exists for multi-family residential uses. More specific descriptions of the residential districts are as follows and it is the intent and desire of the city that all zoned areas, be served by municipal water and sanitary sewer service.

(B) *Agriculture district.* The purpose of this district is to provide for a very low density single-family district, while helping preserve existing agricultural resources, and to guide the conversion of these lands to higher density residential use when appropriate. Agricultural areas should be protected for development by appropriate standards until they are well served by public facilities and services that will permit higher density residential development.

(C) *R-E, Estate Single-Family district.* The purpose of this district is to accommodate single-family residential development on low density, large estate type lots. This zone is intended to help establish and preserve rural/estate character in certain areas of the city.

(D) *R-1, Single-Family Residential.* The purpose of this district is to accommodate single-family residential uses on generously sized residential lots of at least one acre. This zone is generally applied on the fringe of built-up areas of the city, and may act as a buffer to R-E zones.

(E) *R-2, Single-Family Residential.* This district is intended to provide single-family residential uses on moderately sized, low-density lots of at least one-half acre.

(F) *R-3, Single-Family Residential.* This district is characterized by single-family residential development on medium-sized lots of at least 9,600 square feet, with density not exceeding three units/net acre, i.e. after dedications are made. As with other residential zones, this district also serves as a buffer in providing for a step-down in intensity from higher to lower density residential and other types of development. It is the intent and desire of the city that R-3 zoned areas, which typically have smaller sized lots, be served by municipal water and sanitary sewer service.

(G) *R-3-L, Single Family Residential.* This district is intended to provide single-family residential uses on moderately sized, low-density lots of at least 14,520 square feet, one-third acre.

(H) *R-MF Multi-Family Residential.* This district is to provide for multi-family development, and is characterized by traditional apartment-type units in attached living complexes. Congregate housing for the elderly is also anticipated in this zone. Areas so classified must have all municipal services available. The maximum density in this district is 16 dwelling units to the acre.

(I) *R-MH Manufactured Home/Mobile Home Residential.* This district is to provide for replacement of manufactured home/mobile homes on individually owned lots. Areas so classified must have all municipal services available. A maximum density in this district is one unit per acre.

(J) *Uses permitted.* Uses permitted in the residential districts are set forth in the following table. Where the letter "P" appears opposite a listed use and underneath a residential district, the use is permitted in that district "by right" subject to: (1) providing off-street parking and loading facilities as required by § 153.210; (2) providing landscaping and screening as provided by § 153.212; and (3), conformance with special conditions applying to certain uses as set forth in § 153.160 et seq. Only one principal structure per lot shall be permitted in R-E, R-1, R-2, R-3 and R-3L single-family districts. In addition to the accessory uses provided for in § 153.040 et seq., an accessory structure may be permitted for sheltering a riding horse on a residentially zoned lot or parcel with a minimum area of two acres, provided: (1) The structure is at least 100 feet from adjacent property lines; (2) No more than two horses are kept and sheltered on the





\* All concentrated feedlot operations for livestock shall be subject to conditional use approval.

(M) *Lot, yard and height regulations.* Except as otherwise provided herein, no lot or yard shall be established or reduced in dimension or area in any residential district that does not meet the minimum requirements in the following table; nor shall any building or structure be erected or enlarged that will cause the maximum lot coverage or maximum height regulations to be exceeded for such district as set forth in said table. A listing of supplements and exceptions to these regulations follows the table.

(N) *Minimum dimension requirements.*

<i>Zoning Districts</i>	<i>A</i>	<i>RE</i>	<i>R-1</i>	<i>R-2</i>	<i>R-3</i>	<i>R-3L</i>	<i>R-MF</i>	<i>R-MH</i>
<b>Lot size; minimum</b>								
Single-family (sq. ft.)	5 acres	2 acres	1 acre	½ acre	9,600	14,250	10,000	10,000
Duplex (sq. ft.)	NP	NP	NP	NP	NP	NP	10,000	10,000
Nonresidential uses (sq. ft.)	5 acres	2 acres	1 acre	½ acre	9,600	14,250	10,000	10,000
Multi-family (units/acre)	NP	NP	NP	NP	NP	NP	16	NP
Lot width (all uses)	240 feet	200 feet	120 feet	100 feet	80 feet	100 feet	100 feet	100 feet
Lot depth (all uses)	400 feet	200 feet	120 feet	120 feet	120 feet	120 feet	100 feet	100 feet
Front setback (all uses)	30 feet	30 feet	30 feet	30 feet	30 feet	30 feet	20 feet	20 feet
Side setback (all uses)	30 feet	30 feet	20 feet	10 feet	7 feet	15 feet	10 feet	10 feet
Street side setback (all uses)	30 feet	30 feet	25 feet	25 feet	25 feet	25 feet	20 feet	20 feet
Rear setback	30 feet	30 feet	25 feet	25 feet	25 feet	25 feet	25 feet	25 feet
NP = not permitted								

*Note: All references to lot size and coverage are in net square feet.*

(O) When an existing lot is reduced because of conveyance to a federal, state or local government. For a public purpose, and the remaining area is at least 75% of the required

minimum lot size for the district in which it is located, then that remaining lot shall be deemed to comply with minimum lot size requirements.

(P) Utility facilities, using land or an unoccupied building requiring less than 1,000 square feet of site area, are exempt from minimum lot size requirements of all districts.

(Q) Minimum lot size requirements shall not be interpreted as prohibiting the construction of a single-family residential dwelling unit on a lot that was legally platted and recorded before the adoption of these regulations. For lots that are rendered nonconforming, the necessity of obtaining a variance from such created nonconformity shall not be required as a condition of issuance of a building permit, provided all setback and other requirements can be met.

(R) Residential storage sheds of less than 250 SF in size are exempted from setback requirements if:

- (1) The structure is portable.
- (2) The structure is maintained in good condition.
- (3) The area around the structure is maintained in good condition.

(S) Certain architectural features may project into required yards (setback) as follows:

(1) Cornices, canopies, eaves, or other architectural features, may project a distance not to exceed 30 inches.

(2) Fire escapes may project a distance not exceeding four-and-a-half feet from the exterior wall of the building.

(3) An uncovered stair and necessary landings may project a distance not to exceed three feet, provided such stair and landing shall not extend above the entrance floor of the building except for a railing not exceeding three feet in height.

(4) Bay windows, balconies, and chimneys may project a distance not exceeding 30 inches, provided that such features do not occupy, in the aggregate, more than one-third of the length of the building wall on which they are located.

(T) When an existing setback is reduced because of conveyance to a federal, state or local government for a public purpose, and the remaining setback is at least 75% of the required minimum setback for the district in which it is located, then that remaining setback shall be deemed to satisfy minimum setback requirements.

(U) *Setback averaging.* When a majority of the lots have existing principal structures on them and the street setbacks of said principal structures are on lots within the same block, with the same zoning classification and fronting on the same side of the street, and are less than the required street setback, applicants shall be allowed to use the "average" street setback on that block. In such cases, the "average setback" shall be the mean (average) setback of all developed lots on the same side of the street within the same block as the subject property and with the same zoning classifications; provided that in no case shall more than six (6) lots on either side of the subject property be included in the calculation.



(V) When adjacent to R-E, R-1, R-2, R-3, R-3L, or R-MH districts, multi-family residential and nonresidential structures over one story or 15 feet in height shall have an additional eight-foot side and rear setback for every additional story or 15 feet in building height.

(W) Maximum height limitation is 35 feet in all residential zones with the exception of the A and R-MF districts, where the limitation is 45 feet. Chimneys, smokestacks, ventilators, cooling and water towers, bulkheads, grain elevators and silos, utility and flagpoles, belfries, spires and steeples, and monuments and ornamental towers, may be erected to any height not in conflict with other city ordinances or federal regulations. Communication towers are exempt only to the extent authorized through conditional use approval.

(Ord. 2017-05-635, passed 5-2-17; Am. Ord. 2017-12-669, passed 12-5-17)

## **SPECIAL CONDITIONS APPLICABLE TO CERTAIN USES**

### **§ 153.172 DETACHED ACCESSORY DWELLING UNITS.**

All detached accessory dwelling units (ADU) must conform to the following standards:

1. **Parking.** One parking space shall be provided on-site for each studio and one bedroom accessory unit. Two parking spaces shall be provided on site for each two bedroom accessory unit. Parking for the accessory unit is in addition to the required parking for the primary residence.
2. **Unit Size.** In no case shall an ADU consist of less than 650 heated square feet of floor area, and can be no more than 67% of the size of the primary residence. (for example, 67% of 1,000 SF, the minimum primary SF, is 670 SF).
3. **Setbacks.** The ADU shall meet all setbacks as required by the current zoning. The ADU cannot be located in front of the primary residence on a typical subdivision lot.
4. **Separation.** The ADU shall meet State Fire Code regulations for separation of structures.
5. **Height.** The ADU shall not exceed the height of the primary structure.
6. **Existing Development on Lot.** A single-family dwelling exists on the lot or will be constructed in conjunction with the accessory unit.
7. **Number of Accessory Units Per Parcel.** Only one accessory dwelling unit shall be allowed for each parcel.
8. **Deed Restrictions.** Before obtaining a building permit for an accessory dwelling unit the property owner shall file with the circuit clerk a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner and stating that:
  - The accessory unit shall not be sold separately, unless the property is properly split and conforms to zoning.
  - The unit is restricted to the approved size.
  - The use permit for the accessory unit shall be in effect only so long as either the main residence, or the accessory unit, is occupied by the owner of record as the principal residence.

- The homeowner may designate a person to act as the property owner, record this person with the City, and allow this person to live on and manage the property in the homeowner's absence. Exceptions will be granted for "unforeseen circumstances" such as an active military deployment or illness that prevents the property owner from living on the property. If such an event were to occur, the planning director must give approval for a rental to remain active.
  - Density. In the single-dwelling zones, ADUs are not included in the minimum or maximum density calculations for a site.
9. Architectural features of ADUs shall conform with the single family character of the neighborhood, and be constructed with similar material as the primary residence.
  10. If you have signed a private covenant prohibiting ADUs, you cannot build one. A homeowners' association may have rules against the construction and/or rental of ADUs. You must follow their rules, whether or not your property meets all the other ADU requirements. Be sure to check with your homeowners' association before proceeding with plans.

95

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the City Council of the City of Tontitown, as follows:

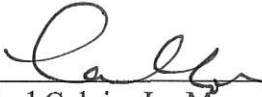
**Section 1.** Section 150.005 PROCEDURES FOR CONSTRUCTION OF DWELLINGS of Chapter 150: BUILDING REGULATIONS and Section 153.080 AGRICULTURE AND RESIDENTIAL DISTRICTS; GENERAL of Chapter 153: ZONING REGULATIONS of the Tontitown Municipal Code is hereby revised, in its entirety, and as attached hereto as Exhibit "A".

**Section 2.** In the event that any section, paragraph, subdivision, clause, phrase, or other provision or portion of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole, or any part or provision, other than the part so decided to be invalid or unconstitutional, and the remaining provisions of this Ordinance shall be construed as if such invalid, unenforceable or unconstitutional provision or provisions had never been contained herein.

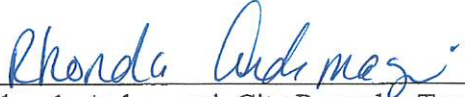
**Section 3.** Declaration of Emergency. It is hereby found and determined that Section 150.005 PROCEDURES FOR CONSTRUCTION OF DWELLINGS of Chapter 150: BUILDING REGULATIONS and Section 153.080 AGRICULTURE AND RESIDENTIAL DISTRICTS; GENERAL of Chapter 153: ZONING REGULATIONS, of the Tontitown Municipal Code should be immediately amended in its entirety in clarify and amend requirements for construction of accessory dwellings or other building or structure within the City of Tontitown. Therefore, an emergency is declared to exist, and this act, being immediately necessary for the preservation and protection of the public peace, health, safety and welfare of the City and its citizens, shall become effective on the date of its passage and approval by the Mayor. If the Ordinance is neither approved nor vetoed by the Mayor, it shall become effective on the expiration of the period of time during which the Mayor may veto this Ordinance. If the Ordinance is vetoed by the Mayor and the veto is overridden by the City Council, it shall become effective on the date the City Council overrides the veto.

PASSED AND APPROVED this 5<sup>th</sup> day of March, 2019.

APPROVED:

  
\_\_\_\_\_  
Paul Colvin, Jr., Mayor

ATTEST:

  
\_\_\_\_\_  
Rhonda Ardemagni, City Recorder-Treasurer  
(SEAL)