

**CITY OF EUREKA SPRINGS  
BOZA AND PLANNING COMMISSION AGENDAS  
REGULAR MEETING**

**Tuesday, May 14, 2024 6:00 p.m. AUDITORIUM, 36 S. Main St.**

**PUBLIC HEARING: None.**

**ROLL CALL - ESTABLISH QUORUM  
PLEDGE OF ALLEGIANCE**

**BOARD OF ZONING ADJUSTMENT**

**Approval of Agenda**

**Public Comments - General**

**Unfinished Business: None.**

**New Business:**

1. None

**Adjournment**

**PLANNING COMMISSION**

**Approval of Agenda**

**Public Comments -**

1. General-

2. To be read - Kyle Palmer

**New Business: None**

**Unfinished Business: None**

**COMMISSION BUSINESS**

1. Approval of Minutes: March 12 regular meeting
2. Approval of Minutes: April 9 special meeting
3. Approval of Minutes: April 23 special meeting
4. Discussion: Tree Cut Ordinance procedures - Kyle Palmer
5. Discussion: B&B Code Updates - Ann Sallee
6. Discussion: Sidewalks - Susan Harman
7. Discussion: Code Book Updates - Kyle Palmer
8. Discussion: New Ordinances - Crypto Mining & Wind Power - Kyle Palmer
9. Agenda setting for June 11 regular meeting, applications due Tues, May 28

**COMMISSIONER COMMENTS**

**DIRECTOR COMMENTS**

**ADJOURNMENT**

City of Eureka Springs    Board of Zoning Adjustment

## Tree Removal Permit Appeal Application

Name of Applicant: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Email: \_\_\_\_\_

Property Owner if different than Applicant: \_\_\_\_\_

Address: \_\_\_\_\_

Address and/or Legal Description of property where tree(s) removal is proposed:

\_\_\_\_\_

Total number of trees to be removed w/base diameter of 4" (inches) or more: \_\_\_\_\_

Number of living trees: \_\_\_\_\_ Number of dead trees: \_\_\_\_\_

Number of Antique trees (50 years of age or with a minimum diameter of 36" (inches) measured four and one-half feet above grade: \_\_\_\_\_

Reason for tree removal request: \_\_\_\_\_

\_\_\_\_\_

Are any of the above trees considered hazardous? \_\_\_\_\_ Yes \_\_\_\_\_ No    If Yes, please explain:

\_\_\_\_\_

**At the time of filing this application, the following exhibits must be provided to the Board of Zoning Adjustment, plus a Tree Removal Permit processing fee of \$40**

\_\_\_ 1. The completed application.

\_\_\_ 2. ~~The denied Tree Cut Permit from the Building Official.~~

\_\_\_ 3. A plan or diagram locating all trees distinguishing which trees are proposed for removal or destruction and the location of any existing or proposed structures.

\_\_\_ 4. Provide current photographs of property and existing structures.

*I certify that I have read and understand Sections ?????? of the Eureka Springs Municipal Code (attached) which apply to the application for which I am seeking approval. I further certify that all the information furnished is correct to the best of my knowledge.*

\_\_\_\_\_

Signature of owner if other than applicant

\_\_\_\_\_

Applicant's signature

\_\_\_\_\_

Date

### Report of Tree (Living) Removal Permit Appeal to Board of Zoning Adjustment

Public Hearing Date: \_\_\_\_\_

The Board of Zoning Adjustment of the City of Eureka Springs, AR met in \_\_\_regular \_\_\_special session on \_\_\_\_\_ to review the above application for \_\_\_\_\_ living trees.

The application was \_\_\_Approved \_\_\_Denied with \_\_\_ayes \_\_\_nays and \_\_\_abstentions.

Comments & Conditions: \_\_\_\_\_

\_\_\_\_\_

BOZA Secretary

\_\_\_\_\_

BOZA Chair

\_\_\_\_\_

Date

### Report of Tree (Dead or Hazardous) Removal Appeal

The application was approved for \_\_\_\_\_ dead trees \_\_\_\_\_ hazardous trees.

Comments & Conditions: \_\_\_\_\_

\_\_\_\_\_

Building Official

\_\_\_\_\_

BOZA Chair

\_\_\_\_\_

Date    Revised 04.25.24

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING TITLE 14.08 OF THE EUREKA SPRINGS MUNICIPAL CODE REGARDING ZONING DISTRICTS**

**WHEREAS,** The Planning Commission of the City of Eureka Springs, Arkansas, has made a comprehensive study and review of Title 14 of the Municipal Code, and

**WHEREAS,** In the opinion of the Planning Commission certain changes should be made to the municipal code,

**NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS:**

**SECTION 1.** ESMC 14.08.05 K. 1 will read in part as follows: A legal non-conforming B&B shall be required to pay taxes on their business activities.

**SECTION 2.** ESMC 14.08.08 A. Conditional Use Permits will add: Prior to any continuance of a CUP or a legal non-conforming property, documentation shall be required from the CAPC that all tax payments from the current property owner are paid and up to date.

**SECTION 3.** ESMC 14.08.08 G. Revocation of a Conditional Use Permit shall add the following language: The city may revoke a conditional use permit for violation of any condition of the permit including non-payment of CAPC taxes for 180 days.

**SECTION 4.** ESMC 14.08.13 Definitions shall add: The Definition of “Unit” as it pertains to Tourist Lodging and Bed and Breakfasts shall be defined as one (1) bedroom which sleeps two (2) people. Besides the entrance to the room in the house, a bedroom must also contain at least one method of egress.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2024.**

**APPROVED:**

**ATTEST:**

\_\_\_\_\_  
Ida Meyer, Clerk Treasurer

\_\_\_\_\_  
Robert “Butch” Berry, Mayor

1 State of Arkansas

As Engrossed: S4/6/23

2 94th General Assembly

# A Bill

3 Regular Session, 2023

HOUSE BILL 1799

5 By: Representative McClure

6 By: Senator J. Bryant

## For An Act To Be Entitled

9 AN ACT TO CREATE THE ARKANSAS DATA CENTERS ACT OF  
10 2023; TO CLARIFY THE REGULATION OF THE DIGITAL ASSET  
11 MINING BUSINESS; AND FOR OTHER PURPOSES.

## Subtitle

15 TO CREATE THE ARKANSAS DATA CENTERS ACT  
16 OF 2023; AND TO CLARIFY THE REGULATION OF  
17 THE DIGITAL ASSET MINING BUSINESS.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22 SECTION 1. Arkansas Code Title 14, Chapter 1, is amended to add an  
23 additional subchapter to read as follows:

### Subchapter 5 – Arkansas Data Centers Act of 2023

#### 14-1-501. Title.

28 This subchapter shall be known and may be cited as the "Arkansas Data  
29 Centers Act of 2023".

#### 14-1-502. Legislative findings and intent.

##### (a) The General Assembly finds that:

33 (1) The data centers industry began its modern version in the  
34 1980s, and the industry has seen accelerated growth since 2008;

35 (2) Data centers have seen global growth with the expansion of  
36 bandwidth, the need for analytical data research, and digital currency;



1           (3) Data centers, digital currency, and blockchain technology  
2 are legal in all fifty (50) states; and

3           (4) Guidance for future industry growth is needed in Arkansas to  
4 protect Arkansans from fraudulent business practices.

5           (b) Through the enactment of this subchapter, the General Assembly  
6 intends to:

7           (1) Recognize that data centers create jobs, pay taxes, and  
8 provide general economic value to local communities and this state; and

9           (2) Clarify the guidelines needed to protect data asset miners  
10 from discriminatory industry specific regulations and taxes.

11  
12           14-1-503. Definitions.

13           As used in this subchapter:

14           (1) "Blockchain network" means a group of computers operating  
15 and processing together to execute a consensus mechanism to agree upon and  
16 verify data in a digital record;

17           (2) "Digital asset" means cryptocurrency, virtual currency, and  
18 natively electronic assets, including without limitation stable coins,  
19 nonfungible tokens, and other digital-only assets, that confer economic,  
20 proprietary, or access rights or powers;

21           (3) "Digital asset miner" is an individual who mines for digital  
22 assets;

23           (4) "Digital asset mining" means use of electricity to power a  
24 computer for the purpose of securing or validating a blockchain network;

25           (5) "Digital asset mining business" means a group of computers  
26 working at a single site that consumes more than one megawatt (1 MW) on an  
27 average annual basis for the purpose of generating digital assets by securing  
28 a blockchain network;

29           (6) "Home digital asset mining" means mining digital assets in  
30 areas zoned for residential use;

31           (7) "Legislative body" means the quorum court of a county or the  
32 city council, board of directors, board of commissioners, or similar elected  
33 governing body of local government;

34           (8) "Local government" means a county, a city of the first  
35 class, a city of the second class, or an incorporated town;

36           (9)(A) "Node" means a computational device that contains a copy

1 of blockchain-distributed ledger technology.

2 (B) "Node" includes a series;

3 (10) "Ordinance" means an ordinance, resolution, or other  
4 appropriate legislative enactment of a legislative body that:

5 (A) Prohibits an individual from operating a business from  
6 a residence; or

7 (B) Requires an individual to obtain approval before  
8 operating a business from a residence;

9 (11) "Person" means an individual or legal entity; and

10 (12) "Residence" means a permanent dwelling place, unit, or  
11 accessory structure.

12  
13 14-1-504. Digital asset mining.

14 (a) A digital asset mining business may operate in this state if the  
15 digital asset mining business complies with:

16 (1) State law concerning business guidelines and tax policies;

17 (2) Any ordinance concerning operations and safety;

18 (3) Any rule or rate for utility service provided by or on  
19 behalf of a public entity; and

20 (4) State and federal employment laws.

21 (b) A digital asset miner shall:

22 (1) Pay applicable taxes and government fees in acceptable forms  
23 of currency; and

24 (2) Operate in a manner that causes no stress on an electric  
25 public utility's generation capabilities or transmission network.

26 (c) An individual may utilize a node in this state for the purpose of  
27 operating home digital asset mining at the individual's residence according  
28 to applicable utility rules and rates.

29 (d) A person may have a digital asset mining business in an area that  
30 is zoned for industrial use that has not been designated by the local  
31 government for other uses.

32 (e) A person that is engaged in home digital asset mining or that has  
33 a digital asset mining business shall not be considered a money transmitter  
34 under the Uniform Money Services Act, § 23-55-101 et seq.

35  
36 14-1-505. Discrimination against digital asset mining business

1 prohibited.

2 (a) Except as provided by subsection (d) of this section, a local  
3 government shall not:

4 (1) Enact or adopt an ordinance, policy, or action that limits  
5 the sound decibels generated from home digital asset mining other than the  
6 limits set for sound pollution generally;

7 (2) Impose a different requirement for a digital asset mining  
8 business than is applicable to any requirement for a data center;

9 (3) Rezone an area in which a digital asset mining business is  
10 located without complying with applicable state law and local zoning  
11 ordinances; or

12 (4) Rezone an area with the intent or effect of discriminating  
13 against a digital asset mining business.

14 (b) A digital asset mining business may appeal a change in zoning of  
15 an area by a local government under any applicable state law or local zoning  
16 ordinance.

17 (c) If consistent with applicable state and federal statutes, orders,  
18 rules, and regulations, including without limitation § 23-3-114 and § 23-4-  
19 103, the Arkansas Public Service Commission shall not establish an  
20 unreasonably discriminatory rate for a digital asset mining business  
21 customer.

22 (d) The prohibitions under subsection (a) of this section do not apply  
23 to any rule or rate for utility service provided by or on behalf of a public  
24 entity.

25

26 /s/McClure

27

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29 **APPROVED: 4/13/23**

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# Fire Marshal reconsidering Nimbus Wind Farm opinion

By Becky Gillette · May 1, 2024



State Fire Marshal Dennis Free has written to Scout Clean Energy Nimbus Wind Farm opponent, E. Richard Williams, that Free is reconsidering earlier advice to Carroll County Judge David Writer. Free had said that the proposed \$300-million project with 46 wind turbine towers more than 600 feet tall is not required to submit construction documents and perform inspections under the 2021 Arkansas Fire Protection Code (AFPC), Volume II.

"The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with this code," Free wrote in an email that was published in the *Eureka Springs Independent* in mid-April. "The windmills (turbines) are no different than large electrical power lines, which do not require construction documents. Wind turbines are new to Arkansas and there are no International Code Council (ICC) adopted codes to regulate them."

However, in an email April 26 to Williams, Free wrote that after speaking with an architect from Eureka Springs, "he has given me some information and guidance on how to view these projects that I may have overlooked or may have been misinformed from ICC. I just want to make sure that the State Fire Marshal's Office is making the correct enforcement of the codes."

Williams said the ICC requires wind loads on every building or structure be evaluated in accordance with the ASCE Standard 7.

"In other words, wind turbines and windmills must adhere to the same standards and safety requirements as any other building or structure," Williams said. "Their design and installation should consider the local wind conditions, exposure category, and other relevant factors to ensure their stability and safety. If you are planning to install a wind turbine/windmill, it's essential to consult a qualified engineer or follow applicable code provisions to ensure compliance and safety."

Williams and other opponents contend that the Nimbus Wind Farm is being constructed with inadequate regulatory oversight that fails to take into account potential consequences to health, safety, the environment and water resources in the area proposed for the wind turbines. Williams said opponents will continue to inquire into regulations that will ensure that this project does, at minimum, have some oversight from qualified professionals.

"The AFPC 2021 requires permit applications and oversight for any buildings or other structures that are three or more stories high," Williams said. "The AFPC 2021 applies to all counties in the state and requires permit applications, construction documents, testing and inspections for any structure in the state that is three or more stories tall."



Opponents of Nimbus have expressed concern about lightning strikes causing turbine fires that could be difficult to fight because the towers are so tall. There is unease that a fire could spark a wildfire in the steep terrain that includes pastures and dense woods, and that fiberglass from burning turbine blades could contaminate surrounding lands.

Free wrote in the email in mid-April that he had researched and found where it would be beneficial, not required, to have fire suppression installed in each turbine. "I would strongly recommend the fire suppression system," Free wrote. "National Fire Protection 850 is the standard for fire suppression in wind turbines. This standard has not been adopted by the State of Arkansas."

Williams said it is his understanding that it is the responsibility of Carroll County to administer/enforce the AFPC.

County Judge David Writer said the county doesn't have the expertise and couldn't afford to police construction of the wind turbines.

"I don't even know how we would go about that," Writer said. "That falls under the state's statutes. We don't have a county building inspector. I don't even know who would be qualified to inspect this. You would have to create that office at quite an expense to the county. There are no guidelines to look at. That is why we are relying on the State Fire Marshal to make the right decision regarding this project."

Nimbus is the first proposed industrial wind turbine facility in Arkansas, leaving the state at a disadvantage regulating the facility compared to states like Oklahoma and Texas that have large numbers of wind generators.

Proponents of wind energy state it is a critical part of reducing emissions partly responsible for climate change. Scout has said the project would provide millions in tax revenues and lease revenues for landowners.

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Share this:



**Kyle Palmer**

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**From:** Ferguson Stewart <ferg\_stewart@yahoo.com>  
**Sent:** Tuesday, May 7, 2024 11:40 AM  
**To:** Kyle Palmer  
**Subject:** Land use by zoning planning commition

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## **2010 Arkansas Code**

### **Title 14 - Local Government**

#### **Subtitle 3 - Municipal Government**

#### **Chapter 56 - Municipal Building And Zoning Regulations -- Planning**

#### **Subchapter 4 - Municipal Planning**

#### **§ 14-56-413 - Territorial jurisdiction.**

##### **14-56-413. Territorial jurisdiction.**

**(a) (1) (A)** The territorial jurisdiction of the legislative body of the city having a planning commission, for the purpose of this subchapter, shall be exclusive and shall include all land lying within five (5) miles of the corporate limits.

**(B)** If the corporate limits of two (2) or more municipalities of the first or second class are less than ten (10) miles apart, the limits of their respective territorial jurisdictions shall be a line equidistant between them, or as agreed on by the respective municipalities.

**(2) (A)** Cities now having eight thousand (8,000) population or more and situated on navigable streams shall have the authority to administer and enforce planning and zoning ordinances outside their corporate limits as follows:

**(i)** For cities of eight thousand (8,000) to fifty thousand (50,000) population, the jurisdictional area will be one (1) mile beyond the corporate limits;

**(ii)** For cities of fifty thousand (50,000) to one hundred fifty thousand (150,000) population, the jurisdictional area will be two (2) miles beyond the corporate limits;

**(iii) (a)** For cities of one hundred fifty thousand (150,000) population and over, the jurisdictional area will be three (3) miles beyond the corporate limits.

**(b)** Upon July 3, 1989, no city with a population in excess of one hundred fifty thousand (150,000) persons and which is situated on a navigable stream shall exercise any zoning authority outside the boundaries of the county wherein it is located without the approval of the quorum court of the county wherein the city is not located and the approval of the governing bodies of all other cities having zoning authority over the area.

**(B)** The city populations will be based on the latest available United States census data.

**(C)** The provisions of subdivision (a)(2) of this section shall not restrict the powers of any city currently exercising the authority authorized under this subdivision.

**(b) (1)** The planning commission shall designate the area within the territorial jurisdiction for which it will prepare plans, ordinances, and regulations.

**(2)** A description of the boundaries of the area shall be filed with the city clerk and with the county recorder.

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