This ordinance failed on its second reading Dec. 10, 2009

ORDINANCE NO. 2112

**AN ORDINANCE AMENDING CHAPTER 9.08
OF THE EUREKA SPRINGS MUNICIPAL CODE**

WHEREAS, the City Council of Eureka Springs is desirous of improved sidewalks; and
WHEREAS, the City Council recognizes that sidewalks are an integral part of the mobility options for a community;
WHEREAS, the City Council believes that sidewalks must promote, to the maximum extent feasible, the safety of pedestrian access, movement, and protection for the physically able, physically challenged, children or seniors (or variously-abled) within the community; and
WHEREAS, the City Council believes that language relating to the vacating of streets and alleys has been inappropriately placed in the Municipal Code under Sidewalks and should be placed in a separate Chapter.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF EUREKA SPRINGS, THAT Chapter 9.08 SIDEWALKS is hereby amended to read as follows:

Section 1: Section 9.08.03 Sidewalks outside Historic District is hereby amended to change its number to 9.08.05.

Section 2: Section 9.08.04 Construction is hereby amended to change its number to 9.08.06.

Section 3: Section 9.08.05 Improvements by City is hereby repealed.

Section 4: Section 9.08.08 Vacating Street or alleys is hereby repealed.

Section 5: Sections 9.08.01 and 9.08.02 are hereby repealed and replaced with:

9.08.01 Purpose It is in the best interests of the City to require the installation of sidewalks along both sides of all streets in the city where such installation is deemed necessary and appropriate. The primary purpose of such installation shall be to provide for pedestrian safety, to provide for Americans with Disabilities Act (ADA) pedestrian access, and to provide continuity with preexisting sidewalks

9.08.02 Building Permit It shall be the duty of property owners to obtain a building permit prior to the installation, replacement or repair of all public sidewalks; and to build all sidewalks in the city in accordance with the specifications set for in this section and with ADA guidelines. The fee shall be waived for a building permit relating to public sidewalk construction and repair.

9.08.03 Duty to Maintain It shall be the duty of every property owner to maintain any sidewalk abutting his property in a safe and useable condition, free of obstructions, and in compliance with ADA guidelines. Sidewalks which are not continuously even or which collect rain water on any part of the walking surface, or which do not meet ADA guidelines, shall not be considered safe and useable.

9.08.04 Installation, Repair and Replacement of Public Sidewalks in Historic District

A. All other public sidewalks and portions thereof located in the Historic District, as defined by the City's Historic District Map and except as hereinafter provided in (A)(4), that shall require initial installation, repair or maintenance shall be installed, repaired and maintained as followed:

(1) Historic limestone must be repaired and refinished if possible;

(2) If the limestone is not repairable, then it *may* be replaced, at the owner's option, either with:

(a) limestone that shall substantially conform in color, texture thickness (minimum of 4 inches) and surface size to the stone slab surfaces that were removed; or

(b) imprinted and tinted concrete in a pattern and color approved by the Eureka Springs Historic District Commission.

(3) In areas where no sidewalks exist, any new installation shall be, at the owner's option, limestone slab (with a minimum thickness of 4 inches) or imprinted and tinted concrete in a pattern and color approved by the Eureka Springs Historic District Commission.

(4) Sidewalks located within the Historic District on the following streets may also be poured concrete, at the owner's option: East Van Buren; West Van Buren; East Mountain Drive; Charles Circle; Cross Street; Elm Circle; Harvey Road; Oakridge Drive; Richard Circle; Tower Road; Drennon Drive; Wood Circle; Holiday Trail; Florence Drive; College Street; Hamilton Street; Martz Lane; Jay Lane; Victoria Woods Boulevard; Pivot Rock Road; Dairy Hollow Road; Breezy Point Road; Breezy Point Circle; Anderson Street; Ravine Street; Grand Avenue and Oregon Avenue.

(5) Board sidewalks will not be approved except for the replacement of those in existence on July 25, 2005.

B. Concrete specifications as set forth herein shall apply to concrete sidewalks.

C. Completed projects shall be inspected and approved by the Building Official.

Section 6: Section 9.08.06(A) Written notice for repair is hereby amended to read:

A. A sidewalk safety team comprised of personnel from the Building and Public Works Departments shall be responsible for evaluating public sidewalk safety and ADA compliance. If following an onsite inspection and evaluation, it is determined by the Sidewalk Safety Team that a sidewalk or portion thereof is broken or otherwise out of repair, or is required to be wholly re-laid, the Building Official shall, without any order from the council, cause a printed or written notice to be served upon the owner of the premises, specifying those repairs that are to be made and directing the owner to make such repairs. This notice may be served in person, by certified return receipt requested restricted delivery mail to the last known address of the owner. The endorsement upon the notice by the Building Official serving the notice shall be sufficient evidence of his action in the premises.

Section 7: Section 9.08.06 (B) is hereby amended to read: "If any person shall neglect or refuse to repair or rebuild any sidewalk in *within one hundred eighty days (180) days* after notice as aforesaid, he shall be subject to a fine of Twenty-Five Dollars ($25.00) for each offense, and each day he shall neglect or refuse to repair said sidewalk, shall constitute a separate offense. *The owner shall be allowed an extension of up to ninety (90) days*

upon approval of the Building Official. He shall also be liable for all damages which the city may incur by reason thereof, to be recovered by the city in an action of law."

Section 8: Section 9.08.06 (C) now becomes 9.08.07 (C)

C. The Building Inspector shall, in all cases where parties refuse or neglect to repair or rebuild sidewalks in pursuance of notice, or where the owner cannot be found, cause the sidewalk to be repaired or built within a reasonable time after the expiration of the notice and report the expense of the work to the City Council, who shall proceed to assess the cost of such improvements against the property. The order of assessment may be in form as follows:

ORDERED – That the several sums set opposite the following lots, or parts of lots, and the names of the owners, thereof, respectively, to-wit: Lot_____ Block____, owned by _____. Amount assessed, $_____ be and the same are hereby assessed, respectively, on said lot, and against the respective owners thereof, to defray the expenses of a sidewalk or sidewalks therealong constructed or repaired by the Building Inspector.

The Building Inspector shall thereupon present the total amount of assessment as made for payment, and upon refusal of payment, the City Attorney is instructed to proceed to collect the amount by law. The assessments so made against the owners or occupants of the property for the purpose of repairing sidewalks within the city, are made and constitute a personal charge against the owners, and also a lien upon the lots or property so assessed from the time of such assessment. (MC 1978, 9.04.05)

Section 9: Section 9.08.07 Driveway construction is hereby amended to change its number to 9.08.08.

Section 10: All Ordinances or Resolutions, and parts thereof, in conflict with this Ordinance are hereby repealed to the extent of such conflict. In the event any one or more of the provision contained in this Ordinance shall for any reason be held by a Court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remaining provisions of this Ordinance, and this Ordinance shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

PASSED AND APPROVED, this _____ day of _____, 2009.

APPROVED:

_____

Dani D. Joy, Mayor

ATTEST:

_____

Mary Jean Sell CMC, City Clerk-Treasurer