

ORDINANCE NO 2201

AN ORDINANCE REPEALING MUNICIPAL CODE SECTIONS 5.04.01 - 5.04.09 MAINTENANCE OF REAL PROPERTY AND REPLACING IT WITH CODE SECTIONS 5.04.01 - 5.04.11

WHEREAS, the Eureka Springs City Council has been asked by citizens to update the current code and enforce the codes as written so as to keep privately owned areas clean and safe; and

WHEREAS, existing Code Section 5.04 needs to be updated and expanded to accomplish City beautification and to eliminate health and safety issues:

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS, THAT: SECTION 5.04.01 THROUGH 5.04.09 ARE HEREBY REPEALED AND REPLACED AS FOLLOWS WITH 5.04.01 THROUGH 5.04.11:

Definitions: As used in this ordinance the following terms shall have the following definitions:

1. Nuisance: that which causes offence, annoyance or injury; an act or omission which obstructs or causes inconvenience or damage in the exercise of rights common to all. A nuisance can be either public (also "common") or private. A public or common nuisance is such an inconvenience or troublesome offence, as annoys the whole community in general, and not merely some particular person. To constitute a public nuisance, there must be such a number of persons annoyed (a simple majority of adjacent property owners within 200 feet) that the offence can no longer be considered a private nuisance.
2. Unsanitary: something that is not clean or that does not meet standards for cleanliness and constitutes a threat to the health and safety of the residents
3. Junk: any undesired thing or substance that meets the definition of public/common nuisance
4. Unsafe: not safe; dangerous.
5. Repair: to restore to sound condition after damage or injury; to fix; to set right, renew or revitalize
6. Eliminate: to get rid of; remove
7. Condemn: to judge or declare to be unfit for use or consumption, usually by official order
8. Motor vehicle: a self-propelled wheeled conveyance, such as a car or truck that does not run on rails
9. Trailer: a small or large transport vehicle designed to be hauled by a truck or tractor

10. Boat: open craft of a size that might be carried aboard a ship; an inland vessel that conveys on water, of any size

11. Equipment: a set of tools, devices, kit, etc., assembled for a specific purpose; the articles, implements, etc., used or needed for a specific purpose or activity

12. Non-use: abeyance, absence, abstinence, disuse, forbearance, neglect, non-utilization, suspension

13. Lawn: a plot of grass, usually tended or mowed, as one around a residence or in a park or business. For this ordinance in Eureka Springs we are referring to the lawn visible from a street or alley.

14. Medicinal Plants/weeds: plants – herbs – grown for medicinal purposes, as opposed to growing them for culinary or ornamental purposes

SECTION 1: Section 5.04.01. The owner(s) or occupant(s) of property within the Eureka Springs City limits are hereby required to:

A. Cut front and side grass lawns visible from the street that exceed 8 inches. Remove and/or cut weeds visible from the street/alley. Maintain garden/flower areas and shrubs visible from the street/alley. Medicinal weeds/plants may be cultivated in a garden/flower bed setting.

Bamboo may be cultivated within the City limits, but must not encroach upon another citizen's or City property or become an obstacle to vision for drivers.

B. Remove garbage, rubbish, or any other unused *or* unsanitary articles including, but not limited to: boards, bricks, sheet metal, construction materials, appliances, tires and plumbing fixtures. This applies to items which are in public view and are not being used in immediate construction projects and meet the definition of nuisance.

C. Eliminate any nuisance that might become a breeding place for flies, mosquitoes, rats, pests, germs, or vermin.

D. Remove any items that might interfere with the flow of drainage water in ditches, drains, or culverts.

Section 5.04.02 Violators of Section 5.04.01 will be given written notice that they have ten (10) calendar days to correct the violation. Notice may be by personal delivery, regular mail, or certified mail to the last known address, or posting a "Notice" on the premises. If the condition is not corrected in the ten (10) days, the City Building Official or City police officers are authorized to cite the person for said violation of this ordinance. The City Building Official is further authorized to negotiate with the property owner a plan of corrective action that shall not exceed 30 days. The City Building Official is authorized to seek permission from a Court of competent jurisdiction to enter into a contract with a private contractor to perform mowing and/or clean-up. Competitive bidding shall be obtained and approval to proceed shall be authorized by the Mayor. The cost of labor, equipment, and supplies incurred by the City may be claimed by the City as restitution by the Court. In cases

where the violator does not respond within ten (10) days, one notice attempt shall be sufficient for repeat offenses.

Section 5.04.03 In the event the City expends City funds for mitigation and/or rehabilitation of a violation, the City may file a lien against the premises for the cost of the clean-up, as authorized by Arkansas Code Section 18-44-101 which lien may be enforced against the real estate within eighteen (18) months by filing suit in Carroll County Circuit Court. The Mayor shall direct the City Attorney to file the lien.

Section 5.04.04 A person in violation of section 5.04.01 shall be guilty of an unclassified misdemeanor and may be fined up to one hundred dollars. For second and subsequent offenses the fine may be up to two hundred dollars. Each day the violation continues shall constitute a separate offense.

Section 5.04.05 The owners of fire-damaged, dilapidated or casualty-damaged properties that render the structure(s) or premises unsafe, unsightly, or unsanitary are required to repair or eliminate the condition. The owner of the property shall be given written notice of the violation by the City Building Official by any method authorized for service of process by Rule 4 of the Arkansas Rules of Civil Procedure. The Notice shall give the owner thirty (30) days from receipt in which to eliminate the violation, or, if additional time is needed and requested, to present a written plan of timely abatement acceptable to the City Building Official. If the correction or abatement is not completed to the satisfaction of the Building Official, he or she may apply to the City Council to have a nuisance declared and proceed for a condemnation as authorized by State and City law.

Section 5.04.06 Where the damaged, dilapidated or casualty-damaged structure(s) or properties are inside the boundaries of the Historic District of Eureka Springs, the Historic District Commission will be included in the process. The Historic District Commission shall review the written plan of timely abatement. If the correction or abatement plan is not satisfactory to the Building Official or the Historic District Commission, the Historic District Commission may review an application for demolition of the structure(s) before the City Council considers an action to declare a nuisance and condemn the structure. If the Historic District Commission does not issue a Certificate of Appropriateness for abatement or demolition of the structure(s)/property, then the City Council can act as an appellate body to provide approval.

Section 5.04.07(a) It shall be and is hereby declared to be unlawful for any person or persons, partnership, corporation or association to own, keep or maintain any house, building and/or structure within the corporate limits of the City of Eureka Springs, Arkansas, which constitutes a nuisance and which is found and declared to be a nuisance by the City Council.

Section 5.04.07(b) Any such house, building and/or structure which is found and declared to be a nuisance by the City Council may be condemned to ensure the removal thereof as herein provided. In cases of the structure being located within the Eureka Springs Historic District, the Historic District Commission or City Council must first issue a Certificate of Appropriateness.

Section 5.04.07(c) The action of the City Council condemning any house, building and/or structure which constitutes a nuisance will include an adequate description of the house, building and/or structure, the name or names, if known, of the owner or owners thereof; and shall set forth the reason or reasons said house, building and/or structure is or has been condemned as a nuisance. In the case that the structure is within the Historic District, the action will also include reference to the issuance of a Certificate of Appropriateness by the Historic District Commission.

Section 5.04.07(d) After a house, building and/or structure has been found and declared to be a nuisance and condemned, a true or certified copy of said action will be served on the owner by any method authorized for service by Rule 4 of the Arkansas Rules of Civil Procedure.

Section 5.04.07(e) If the house, building and/or structure constituting a nuisance has not been torn down and removed, or said nuisance otherwise abated within thirty (30) days after notice is given, the same may be torn down and/or removed by the City. Arkansas Code Sections 14-54-902, 903, and 904 are hereby adopted as if set out herein word for word. A construction application is required for all demolition within the city limits.

Section 5.04.07(f) The person(s) or business designated by the Mayor, after competitive bidding, to tear down and remove any such house, building and/or structure constituting a nuisance will ensure the removal thereof and dispose of the same in such a manner as deemed appropriate in the circumstances. To that end they may, if the same has a substantial value, sell any saleable material. An inventory of the salable material shall be prepared by the contracted person or business and the Building Official. Sale shall be to the highest bidder for cash after ten (10) days notice being first given by one publication in some newspaper having a general circulation in the City.

Section 5.04.07(g) All of the proceeds of the sale of any such house, building, and/or structure or the proceeds of the sale of saleable materials therefrom shall be paid to the Director of Finance for the City of Eureka Springs who will keep such money and fines in a separate line item in the city budget. If any saleable materials therefrom are sold for an amount which exceeds all costs incidental to the abatement of the nuisance (including the cleaning up of the premises) by the City, plus any fine or fines imposed, the balance thereof will be returned by the Director of Finance to the former owner or owners of such house, building and/or structure constituting the nuisance.

Section 5.04.07(h) If the City has any net costs in removal of any house, building or structure, the City shall have a lien upon the property as provided by Section 1 of Act 8 of 1983. The lien may be enforced at any time within 18 months after the work has been done, by an action in the Circuit Court.

Section 5.04.08 The owner(s) or occupant(s) of property within the City limits of Eureka Springs are hereby required to remove motorized vehicles, trailers, boats and equipment that are inoperable and have been parked fourteen (14) days in sight from a City street. The vehicle or equipment shall be presumed to be inoperative when any of the following conditions exist:

1. One or more tires are flat
2. One or more wheels are missing
3. Weeds or grass have grown around the vehicle or equipment
4. The vehicle has no current registration
5. Any other damage that would render it unusable for its intended natural use

This section does not apply to vehicles or equipment stored in closed garages or out-buildings, but does if it is visible from a City street. This section does not apply to automotive or equipment businesses operating in commercial or industrial zones.

Section 5.04.09 Violators of section 5.04.08 shall be given written notice that they have seven (7) calendar days to remove the vehicle. Notice may be by personal delivery, regular mail, certified mail or by notice posted on the offending item in the case of an owner not being identified. If the condition is not corrected in the seven (7) days, the City Building Official or City police officers are authorized to engage a licensed towing/handling entity to remove the vehicle, at the expense of the violator. The owner may also be charged as provided in section 5.04.10.

Section 5.04.10 A person in violation of section 5.04.08 shall be guilty of an unclassified misdemeanor and may be fined up to one hundred dollars. For second and subsequent offense the fine may be up to two hundred dollars. Each day the violation continues shall constitute a separate offense.

SECTION 2. Severability Clause: In the event that any section, subsection, 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, code section or chapter 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, Code, code section or chapter shall remain in effect.

SECTION 3. Repeal Clause: All Ordinances, Resolutions, and parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS, ON THIS THE 28th DAY OF MAY, 2014.

APPROVED:


Morris Pate, Mayor

ATTEST:


Ann Armstrong, City Clerk/Treasurer

Aldermen voting "Aye" – Joyce Zeller, James DeVito, Dee Purkeypile, Terry McClung and David Mitchell
Alderman voting "No" – Mickey Schneider