

ORDINANCE NO. 2047

AN ORDINANCE AMENDING CHAPTER 2.60 HISTORIC DISTRICT COMMISSION OF THE CITY OF EUREKA SPRINGS, ARKANSAS, MUNICIPAL CODE

WHEREAS, the City of Eureka Springs, Arkansas has a designated Historic District and provided for the appointment of a Historic District Commission, (HDC) and

WHEREAS, it has been determined that the City Ordinance adopted for the purpose of protecting the historic and aesthetic qualities of the City of Eureka Springs should be amended to further provide for the preservation and rehabilitation or restoration of structures which constitute or reflect distinctive features of the architectural or historical resources of the City, thereby promoting the public welfare and preserving the cultural heritage of the City, it is

NOW, THEREFORE, ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS THAT Chapter 2.60 of the City Municipal Code is amended as follows:

Insert the following before current Sec. 2.60.13

2.60.13 Legislative Intent

It is the intent of the Eureka Springs City Council that this ordinance be interpreted narrowly to prevent the structures in the Eureka Springs Historic District from deteriorating to a point where demolition is the only appropriate treatment.

2.60.14 Maintenance, Repair, Demolition By Neglect

No owner or person with an interest in real property located within the Historic District, also including but not limited to Sole Proprietors, members of Limited Liability Companies and shareholders in closely held corporations, shall permit said property to fall into a state of disrepair. The owner or person with an interest in the real property in charge of any building or structure within the Historic District shall keep in good repair (1) all of the exterior portions of the structure and (2) all interior portions which, if not so maintained, may cause the exterior portions of the structure to deteriorate, decay or become damaged or otherwise to fall into a state of disrepair. For the purpose of determining a condition deemed to be "deteriorating" the U. S. Secretary of the Department of the Interior's *Guidelines for Rehabilitation of Historic Buildings*, the *Eureka Springs Historic District Guidelines* and the *International Building Code: International Property Maintenance Code* as adopted by the City of Eureka Springs shall constitute the primary source of definitions.

"Disrepair" shall include, but shall not be limited to, the deterioration of any exterior architectural feature that would, in the judgment of the Historic District Commission (HDC) and the City of Eureka Springs Building Official, produce a detrimental effect on the structure or the distinguishing characteristics of the structure. Additionally, the Building Official and Historic District Commission (HDC) shall consider the following for the purpose of determining a condition of demolition by neglect, defined as "the destruction of a building or structure through abandonment or lack of maintenance":

A. The deterioration of a building to the extent that it creates or permits a hazardous or

unsafe condition as determined by the Building Official

B. The deterioration of a building characterized by one (1) or more of the following:

1. Those buildings that have parts thereof which are so attached that they may fall and injure members of the public or property;
2. Members of walls, or other vertical supports which split, lean, list or buckle due to defective material or deterioration or that are insufficient to carry imposed loads with safety;
3. Members of roofs, porch ceilings and roof supports, or other horizontal members which sag, split or buckle due to defective material or deterioration or that are insufficient to carry imposed loads with safety;
4. Fireplaces or chimneys which list, bulge or have settled due to defective material or deterioration, due to missing mortar, bricks or masonry;
5. Any fault, defect or condition in the building which renders the same structurally unsafe or not properly watertight, including the deterioration of exterior walls, roofs and foundations, and broken or missing windows, doors, shingles and siding;
6. The deterioration of exterior finishes such as peeling paint with rotting, holes or other forms of decay, or falling plaster or missing mortar with rotting, holes, or other forms of decay;
7. Any condition deemed to be a fire hazard by the Eureka Springs City Fire Marshall.

2.60.15 Investigations and Reports

The Historic District Commission (HDC), Building Official or Fire Marshall may make such investigations and studies of matters relating to demolition by neglect as deemed necessary and may submit reports and recommendations to the Mayor and other agencies of the city. If in making such investigations and studies, it is determined that there may be demolition by neglect occurring, the Historic District Commission (HDC) shall hold a public hearing. Nothing in this section or ordinance gives any Historic District Commission (HDC) member permission to enter or trespass upon private property without the express written permission of the property owner or tenant.

2.60.16 Procedures Upon Complaint

These procedures shall be followed:

A. Upon the filing of a written complaint with the Historic District Commission (HDC) by three (3) residents at separate addresses within five hundred (500) feet of the property alleging that property subject to the provisions of this ordinance is in a state of deterioration, decay, disrepair or demolition by neglect, the Historic District Commission (HDC) shall submit a request to the Building Official or other designated person or agency to conduct an inspection of the property and file a report with the Historic District Commission (HDC) within thirty (30) days from the date of the request. If the report is not made within thirty (30) days, the Historic District Commission, at the Commission's expense, may hire a qualified independent inspector to conduct the inspection and provide the report. If, in the course of the inspection, a fire hazard is suspected, the City Fire Marshall shall be notified immediately.

B. If the report indicates that Demolition By Neglect may be occurring, the Historic District Commission (HDC) shall forward, by certified mail with return receipt requested, a copy of the report, recommendations to the property owner, and the written guideline for the hearing process.

C. The Historic District Commission (HDC) shall give notice of any public hearing which it is required or authorized to hold under the provisions of this ordinance by following the "Methods of Service of Complaints, Orders and Citations" in Sec. 2.60.21.

D. At such public hearing, the Historic District Commission (HDC) shall afford an opportunity for the presentation of facts and the expression of views by those desiring to be heard.

2.60.17. Determinations of the Commission

A. Any determination or finding that property subject to the provisions of this ordinance is in a state of disrepair, decay, deterioration, or demolition by neglect shall be set forth in writing and the reasons for such determination shall be specifically stated.

B. The Historic District Commission (HDC) shall give notice of any such determination, reached in concurrence with the Building Official, to the owner of the subject property within fifteen (15) business days.

C. Such determination shall include notice that the property owner is required to submit a proposal for the correction of the conditions to the Historic District Commission (HDC) as an application for a Certificate of Appropriateness (CofA) within forty-five (45) days of date of notification of such determination.

D. The notice to the property owner shall also include information on possible financial assistance in the form of grants, low interest loans and tax credits that may be available. The Historic District Commission (HDC) shall assist the property owner in finding financial assistance if possible.

E. If the owner of the property fails to file an Application for a Certificate of Appropriateness (CofA) which contains a proposal to correct the determined defects within forty-five (45) days, the Historic District Commission (HDC) shall notify the Building Official with a request to issue a citation and "Order to Repair" for the purpose of initiating enforcement procedures as permitted by this ordinance.

2.60.18 Stay of Proceedings

An approved Certificate of Appropriateness (CofA) and arrangements to correct the underlying conditions shall stay proceedings under this ordinance. The Historic District Commission (HDC) may consider a verified personal tragedy of the applicant to extend the Certificate of Appropriateness (CofA) if necessary. The Historic District Commission (HDC) may require the property owner and other parties in interest, if any, to execute any other agreements or forms necessary to ensure compliance.

2.60.19 Penalties and Remedies

Enforcement of this ordinance may be by any one (1) or more of the following methods, and the institution of any action under any of these methods shall not relieve any party from any other civil or criminal proceeding prescribed for violations and prohibitions:

A. Civil Remedies. The Historic District Commission (HDC) may apply for appropriate judicial relief such as injunctions or Orders of Abatement in addition to the penalties prescribed in this ordinance for violations. An Order of Abatement may direct that improvements or repairs be made, or that any other action be taken that is necessary to bring the property into compliance with these regulations. No Order of Abatement shall be requested unless and until the Building Official shall deliver the written Order to Repair to the property owner with the findings of fact in support of such determination to repair as determined at the Historic District Commission (HDC) Public Hearing. It shall be delivered in the manner specified in Sec. 2.60.21 "Methods of Service of Complaints, Orders and Citations." After the party is cited for contempt by the court, and the City executes the Order of Abatement, then the City may place a lien, in the nature of a mechanic's and material, on the property for the cost of executing the Order of Abatement.

B. Penalties: the same as set forth in Sec. 2.60.22.

2.60.20 Demolition

No building may be demolished in the Historic District without a Certificate of Appropriateness (CofA) issued by the Historic District Commission (HDC).

A. Economic Hardship. If an application for a Certificate of Appropriateness (CofA) for demolition is denied and if the property owner feels this denial of a Certificate of Appropriateness (CofA) for demolition will result in substantial economic hardship, the property owner may apply for a Certificate of Economic Hardship within forty-five (45) days based on criteria detailed in the *Eureka Springs Historic District Guidelines*. If the Historic District Commission (HDC) determines that the claims of economic hardship are valid and no reasonable use can be found for the property, that no economic return can be obtained, and that there will be no substantial detriment to the Historic District, then the Historic District Commission (HDC) may issue a Certificate of Economic Hardship and approve the proposed work. If the Historic District Commission (HDC) finds otherwise, it shall deny the application for the Certificate of Economic Hardship and record in its records the reasons therefore.

B. Unapproved demolition of historic structures will be subject to maximum violation penalties. Each day the violation exists shall constitute a separate offense until a faithful restoration of the demolished structure is complete or unless otherwise agreed to by the Historic District Commission (HDC). Further, the Historic District Commission (HDC) may elect to refuse applications for a Certificate of Appropriateness (CofA) for a period of five (5) years from the date of demolition on the subject parcel of land or any adjoining parcels under common ownership and control or those in privity, unless the application for a Certificate of Appropriateness (CofA) is for the faithful restoration of the subject property or unless otherwise agreed to by the Historic District Commission (HDC)

2.60.21 Methods of Service of Complaints, Orders and Citations.

All complaints, orders and citations issued on behalf of the Historic District Commission (HDC) shall be served in compliance with the Arkansas Rules of Civil Procedure. In the event that a property owner cannot be located, service may be completed by publishing notice once (1) each week for two (2) consecutive weeks in any local periodical or newspaper of general circulation in the Western District of Carroll County, Arkansas. Where such service is by publication, a Notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

2.60.22 Penalty, Enforcement

A. Penalty. Any person, firm or corporation violating any provision of this ordinance shall be fined not less than Ten (\$10.00) Dollars nor more than Five Hundred (\$500.00) Dollars for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

B. The Building Official shall be responsible for enforcement of the provisions of this chapter as it pertains to violations.

2.60.23 Circuit Court Designation

Any reference in this ordinance to the Chancery Court shall be interpreted to read Circuit Court.

This Ordinance being necessary for the preservation of the public peace, health, safety and

welfare of the inhabitants of the City of Eureka Springs, Arkansas, this ordinance shall be in full force and in effect from and after its passage and publication.

Adopted this 13th day of August, 2007.

APPROVED:

ATTEST:

Dani D. Wilson, Mayor

Mary Jean Sell, City Clerk-Treasurer