

ORDINANCE NO. 1022

AN ORDINANCE PROVIDING FOR THE CONDEMNATION AND REMOVAL OF HOUSES, BUILDINGS AND/OR STRUCTURES CONSTITUTING A NUISANCE WITHIN THE CORPORATE LIMITS, PROVIDING A PENALTY FOR VIOLATION THEREOF, AND FOR OTHER PURPOSES.

BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS:

SECTION 1. It shall be and it 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 Resolution of the City Council. Any house, building and/or structure which has become, in the opinion of the City Council, dilapidated, unsightly, unsafe, unsanitary, obnoxious, and/or detrimental to the public welfare may, for the purposes of this Ordinance, be found and declared by the City Council to constitute a nuisance.

SECTION 2. Any such house, building and/or structure which is found and declared to be a nuisance by Resolution of the City Council will be condemned to insure the removal thereof as herein provided.

SECTION 3. The Resolution of the City Council condemning any house, building and/or structure which constitutes a nuisance will include in said Resolution 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.

SECTION 4. After a house, building and/or structure has been found and declared to be a nuisance and condemned by Resolution as hereinabove provided, a true and certified copy of said Resolution shall be mailed to the owner or owners thereof by certified mail, return receipt requested, if the whereabouts or the last address of owner or owners be known, and a true copy of said Resolution shall be conspicuously posted on said house, building and/or structure. Provided, that if the owner or owners of said house, building and/or structure be unknown, or if his, her or their whereabouts be unknown, of his, her or their last address be unknown, the posting of the copy of said Resolution as hereinabove provided will suffice as adequate and sufficient notice.

SECTION 5. 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 receipt of the true and certified

copy of said Resolution by the owner, owners, or his, her or their authorized representative or agent, or within thirty (30) days after the posting of a true copy of said Resolution, depending upon what notice was capable of being provided under the circumstances, then the house, building and/or structure constituting the nuisance will be torn down and/or removed, or caused to be torn down and/or removed by the Building Inspector or by such other person or persons as shall be designated by the City Council by Minute Order.

SECTION 6. The Building Inspector or any other person or persons designated by the City Council by Minute Order to tear down and remove any such house, building and/or structure constituting a nuisance will insure the removal and disposal of the same in such a manner as deemed appropriate in the circumstances, and to that end may, if the same have a substantial value, sell said house, building and/or structure, or any saleable material thereof, by public sale to the highest bidder for ready cash, ten (10) days notice thereof being first given by one (1) publication in a newspaper having a general circulation in the City of Eureka Springs, Arkansas, to insure its removal and abatement of the nuisance.

(a) All 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 by the person or persons collecting the same to the City Clerk-Treasurer.

(b) If any such house, building and/or structure, or the saleable materials thereof, be sold for an amount which exceeds all costs incidental to the abatement of the nuisance, including the initial investigation and the final cleaning-up of the premises, by the City, the balance thereof shall be paid by the City Clerk-Treasurer to the owner or owners of the premises on which such house, building and/or structure constituted a nuisance.

(c) If any such house, building and/or structure, or the saleable materials thereof, be sold for an amount which is less than all costs incidental to the abatement of the nuisance, including the initial investigation and the final cleaning-up of the premises, by the City, the balance thereof shall constitute a lien against the premises on which such house, building and/or structure constituted a nuisance. Notice of such lien shall be given by the City Clerk-Treasurer in writing and filed by the City Clerk-Treasurer in the Mortgage Records in the Western District Office of the Circuit Clerk and Ex-Officio Recorder of Carroll County,

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Arkansas. The lien herein provided for may be enforced at any time within eighteen (18) months after work has been completed by an action in the court of equity for the Western District of Carroll County, Arkansas.

(d) If any such house, building and/or structure, or the materials thereof, not be sold at all, all costs incidental to the abatement of the nuisance, including the cleaning-up of the premises, by the City shall constitute a lien against the premises on which such house, building and/or structure constituted a nuisance. Notice of such lien shall be given and filed in the manner set forth in the immediately preceding paragraph, and such lien may be enforced in the same manner and within the same period of time as provided for in said immediately preceding paragraph.

SECTION 7. Any owner or owners of such house, building and/or structure constituting a nuisance who shall fail to tear down, remove or otherwise abate the same within the thirty (30) days period provided for in Section 5 of this Ordinance, shall be deemed to have committed a misdemeanor, and upon conviction thereof in a court of competent jurisdiction, shall be subject to a fine of not less than _____

twenty five and 00/100
Dollars (\$ 25.00) or more than two hundred
fifty and 00/100
Dollars (\$ 250.00), and each day said nuisance is allowed to continue after said thirty (30) days period shall be deemed as a separate and distinct offense.

SECTION 8. In the event it is deemed advisable by the City Council that a particular house, building and/or structure be judicially declared to be a nuisance by a court having jurisdiction of such matters the City Council is hereby authorized to instruct the City Attorney or, if there be no City Attorney, to employ an attorney to bring such an action for said purpose in the name of the City and the only notice to be given to the owner or owners of any such house, building and/or structure sought to be judicially declared to be a nuisance will be that as now provided for by law in such cases in a court of equity or Chancery Court. When any such house, building and/or structure has been declared judicially to be a nuisance by a court of competent jurisdiction a fine of _____

_____ Dollars (\$ _____) is hereby imposed against the owner or owners thereof from the date said finding is made by the Court and

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for each day thereafter said nuisance be not abated constitutes a separate and distinct offense punishable by a fine of _____ Dollars (\$ _____) for each separate and distinct offense. In the event the owner or owners of any such house, building and/or structure judicially found to be a nuisance fails or refuses to abide by the orders of the Court, the Building Inspector or other person or persons referred to in Section 5 of this ordinance will take such action as provided in Section 6 hereof, and Section 6 of this ordinance will be applicable to such owner or owners: The provisions contained in the immediately preceding sentence applies independently of any action as may be taken by the Court judicially declaring the nuisance.

SECTION 9. This Ordinance specifically supercedes Section 103.4 of the 1973 Edition, as most recently supplemented and amended, of the Southern Standard Building Code, which was adopted by the City Council through Ordinance No. 1010 on the 20th day of November, 1976. All other ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed, specifically including Ordinance No. 782, which was passed and approved on the 16th day of March, 1964.

SECTION 10. Any officer or employee, or member of the Board of Adjustments and Appeals, charged with the enforcement of this Ordinance, acting for the applicable governing body in the discharge of his duties, shall not thereby render himself liable personally, and he is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties. Any suit brought against any officer or employee because of such act performed by him in the enforcement of any provision of this Ordinance shall be defended by the City of Eureka Springs until the final termination of the proceedings.

SECTION 11. If a court of competent jurisdiction shall hold any word, phrase, sentence, paragraph or section of this Ordinance to be unconstitutional or unenforceable for any reason, such holding shall not be deemed to render the remainder of this Ordinance unconstitutional or unenforceable.

PASSED, ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS ON THIS _____ DAY OF _____, 1977.

APPROVED:

ATTEST:

MAYOR