

ORDINANCE NO. 948

AN ORDINANCE ESTABLISHING REGULATIONS TO CONTROL THE EXCAVATION, REMOVAL OR FILLING OF SOIL; REQUIRING A PERMIT THEREFORE; PROVIDING PENALTIES FOR THE VIOLATION THEREOF; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Eureka Springs, Arkansas, and the area contiguous thereto included in the Planning Area Map adopted by the City, have terrain problems which must be effectively controlled to prevent adverse affects being imposed upon surrounding private or public property; and

WHEREAS, the unregulated and uncontrolled relocation, filling, excavation, grading, and removal of soil in the City of Eureka Springs has resulted in conditions detrimental to the public health, safety and general welfare, by interferring with surface water drainage, creating nuisances and dangerous open areas attractive to children, depleting natural resources, and lowering the value of adjoining property generally.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF EUREKA SPRINGS, ARKANSAS, THAT:

SECTION 1. No person shall excavate, grade, fill, or otherwise move any soil, upon, from, or to any real property within the area encompassed in the Planning Area Map of the City of Eureka Springs or the corporate limits of the City of Eureka Springs, or transport any soil on any public road to or from any such property, Except in connection with excavation or grading incidental to landscaping any such property, without first having obtained a permit therefore from the Eureka Springs Planning Commission. The word "soil" as used in this Ordinance shall include, but not be restricted to, soil. loam, sand, gravel and rock.

SECTION 2: No owner, operator, lessee or other person in charge of any bulldozer, ditching machine, back hoe, overhead loader or other mechanical device shall operate any such device within the area encompassed by the Planning Area Map of the City of Eureka Springs or within the corporate limits of the City of Eureka Springs without having first filed a certificate of insurance indicating

coverage of not less than Fifty Thousand (\$50,000.00) Dollars by a Manufacturer's and Contractor's policy or a Comprehensive General Liability policy which shall include coverage under "X", "C", and "U" clauses.

SECTION 3. All persons affected by this Ordinance shall submit an application for the relocating of any such soil to, from or on the premises, together with two (2) sets of sketch-plans and data concerning existing conditions within the site and its vicinity showing contour lines and proposed contour grade resulting from the proposed removal or relocation of soil, prepared by an individual acceptable to the Eureka Springs Planning Commission, to the Secretary of the Eureka Springs Planning Commission, or its designee, accompanied by an application fee in such amount as shall be determined by the Eureka Springs Planning Commission. Within fifteen (15) days after the proposed plans and data are submitted, as aforesaid, the Planning Commission or its authorized designee may inspect and review the site and the proposed alterations, and shall inform the applicant that the application, as submitted or as modified by the Planning Commission, is approved or disapproved. When the Planning Commission finds the application and supporting information does not meet the objectives of this Ordinance, it shall express its reasons for denying the application.

SECTION 4. Upon approval of the application, and upon payment of the required permit fee and tender of any performance bond which may be required, an excavation permit shall be issued to the applicant to accomplish the purposes as approved. One copy of the approved plans and data shall be attached to the permit and given to the applicant, and one copy thereof shall be retained by the Planning Commission for its files.

SECTION 5. An applicant may request a hearing by the City Council of Eureka Springs on any application which has been denied, and after publication of notice of a public hearing at least ten (10) days before such hearing in the newspaper of general circulation in the City of Eureka Springs, Arkansas, the City Council of Eureka Springs shall consider and review the application de novo. In reviewing the decision of the Eureka Springs Planning Commission, the Eureka Springs City Council shall be guided and take into consideration

the public health, safety and general welfare and particular consideration shall be given to the following factors:

- (a) Soil erosion by water and wind.
- (b) Drainage.
- (c) Soil fertility.
- (d) Lateral support slopes and grades of abutting streets and lands.
- (e) Land values and uses.
- (f) Such other factors as may bear upon or relate to the orderly and harmonious physical development of the City of Eureka Springs.

If, after examining the application and all evidence related thereto at the scheduled hearing, the Eureka Springs City Council shall be of the opinion the proposed soil relocation or removal will not create conditions detrimental to the public health, safety and welfare, and will not result in the creation of any sharp declivities, pits, depressions, soil erosions, or fertility problems or other conditions of danger, a permit to remove or relocate the soil may be granted.

SECTION 6. The Eureka Springs Planning Commission shall have the power to require a performance bond of the applicant, to assure completion in conformity with the approved application and to further assure that sufficient funds will be available to cover damages which may result to adjoining or surrounding property owners upon establishment of a legal claim for damages, and the Eureka Springs Planning Commission may withhold issuance of a permit herein until any such bond which may be required, in such form and amount, and with sufficient surities acceptable to the Eureka Springs Planning Commission, shall be deposited by the applicant with the Clerk of Eureka Springs.

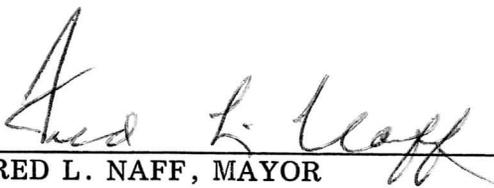
SECTION 7. Any person, firm or corporation violating any of the provisions of this Ordinance shall be subject to a fine not exceeding One Hundred (\$100.00) Dollars, and each and every day that any provision of this Ordinance shall have been violated shall be considered as a separate and distinct violation thereof. In addition, the Eureka Springs Planning Commission shall have the power and authority to issue a "cease and desist order" to enjoin any further action by any person, firm or corporation suspected of violating any of the provisions of this Ordinance, which shall remain in effect until such person, firm or corporation shall establish, to the satisfaction of the Eureka Springs Planning Commission, compliance with this Ordinance. Any person, firm or corporation violating any such "cease and desist order" shall be subject to a fine not exceeding Five Hundred

(\$500.00) Dollars, which may be adjudged in addition to the fine heretofore referenced.

SECTION 8. All ordinances or parts of ordinances inconsistent with the language herein are hereby repealed to the extent of the inconsistency.

SECTION 9. In the judgment of the City Council of Eureka Springs, Arkansas, the public peace, health and safety of the City and the inhabitants thereof demand the immediate passage of this Ordinance, and an emergency is hereby declared to exist whereby this Ordinance shall become effective from and after its passage, approval and publication as provided by law.

PASSED AND APPROVED by the City Council of Eureka Springs, Arkansas this 1st day of March, 1973.

  
FRED L. NAFF, MAYOR

Attest:

  
TRUIE WALSH, CITY CLERK

THOMAS D. LEDBETTER  
ATTORNEY AT LAW

POST OFFICE BOX 637  
HARRISON, ARKANSAS 72601  
501-365-6127

POST OFFICE BOX 366  
EUREKA SPRINGS, ARKANSAS 72692  
501-253-9444