ORDINANCE NO. 1762

AN ORDINANCE AMENDING SECTION 5-19 OF TITLE 14

OF THE EUREKA SPRINGS MUNICIPAL CODE REGARDING

PRESERVATION OF TREES

WHEREAS, the Planning Commission believes that the current Section 5-19 of the Zoning Code regarding Preservation of Trees is in need of clarification and expansion: and

WHEREAS, the Planning Commission/Board of Zoning Adjustment has undertaken a year-long project to re-write the entire tree ordinance to more clearly define acts which will ultimately cause the death of tree; to distinguish the authority of the Building Inspector from that of the Planning Commission/Board of Zoning Adjustment; to provide for a way by which more detailed record keeping of tree cuts will be maintained; and to make the enforcement of this Section more efficient; and

WHEREAS, the Planning Commission held a Public Hearing on these proposed changes and, by a unanimous vote, recommends the following changes to be made in the City Municipal Code.

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

SECTION 1: That Section 5-19 of the Eureka Springs Zoning Ordinance be amended in its entirely by a new Section 5-19, as follows:

5-19 Preservation of Trees

A. For the purpose of this Ordinance, certain words are to be used and interpreted as follows:

1. Tree Any living woody perennial plant with a base diameter of four (4) inches or more as measured one and one-half (1-1/2) feet above ground level; provided, however, that any tree which, in the sole and exclusive discretion of the Building Inspector, has died, is irreversibly diseased or has been irreversibly damaged by natural causes, is not covered by the provisions of this Section.

2. Canopy The area constituting the branches of the tree.

3. Destroy Any intentional or negligent act which, in the sole and exclusive discretion of the Building Inspector, will cause a tree to decline and die within a period of two (2) years including, but not by way of limitation, (1) damage inflicted upon the root system of a tree by the application of a toxic substance; (2) the operation of heavy machinery within the drip line of a tree; (3) the change of natural grade by excavation or filling the area from the trunk of a tree to the drip line; (4) the deposit of a nonporous substance such as asphalt or concrete to a point within the drip line of a tree; or (5) the abuse or mutilation of a tree, except that nothing herein shall be construed to prevent reasonable and proper trimming of trees in accordance with accepted horticultural practices.

4. Drip Line An imaginary vertical line extending from the outermost portion of a tree canopy to the ground.

5. Landscape Site enhancements including trees, shrubs, ground covers, flowers, fencing, earth berms, retaining walls and outdoor furnishings.

B. It shall be unlawful for any person to destroy or remove any tree within the corporate limits of the City without first obtaining a "Tree Removal Permit" ("Permit") from either the City Building Inspector or the Board of Zoning Adjustment, as provided in this Ordinance.

C. An "Application for Tree Removal Permit" ("Application") shall contain at least the following information, along with such other information which may be requested by the Board of Zoning Adjustment:
   1. a plan or diagram locating all living trees as defined hereinabove, distinguishing which trees are proposed for removal or destruction, and the location of any existing or proposed structures; and
   2. the street address and the legal description of the property on which the trees are located;
   3. the zoning district; and
   4. the reason for the tree removal.

D. An Application shall be submitted to the City Building Inspector who shall visit and inspect the site prior to taking any action.

E. After reviewing the application and inspecting the site, the Building Inspector may approve the Application and issue a Permit provided:
   1. all healthy trees within set-back lines as required under the provisions of the City's Zoning Ordinance, except for ingress and egress drives, shall be maintained and preserved;
   2. no more than thirty (30%) percent of the trees on the site, with a maximum of ten (10) trees, are to be or have been removed or destroyed;
   3. no antique tree (one which is fifty (50) years or older) or tree of significant historical or aesthetic value is to be removed; and
   4. no tree with a base diameter of thirty-six (36) inches or larger as measured four and one-half (4-1/2) feet above ground level is to be removed.

F. The City Building Inspector <u>shall</u> deny any Application which does not comply with all of the conditions set forth in E(1)-(4) above; and he <u>may</u> deny any Application which he feels ought to be reviewed by the entire Board of Zoning Adjustment in order to insure compliance with this Ordinance. An Application which has been denied by the Building Inspector for any reason shall be automatically appealed to the Board of Zoning Adjustment which shall have the sole and exclusive authority to permit the removal of any tree notwithstanding the conditions of E(1)-(4) above.

G. An appealed Application shall be forwarded to the Board of Zoning Adjustment, along with a written statement by the Building Inspector setting forth the reasons for the denial, and shall be placed on the agenda for the next regularly scheduled meeting. The publication of the Board of Zoning Adjustment's agenda showing the proposed tree removal along with the address or approximate location of the site shall constitute, for the purpose of this Ordinance, notice that the Board of Zoning Adjustment will take comments from the public in regard to the Application. Following the public hearing, the Board of Zoning Adjustment shall review the Application, and shall, by majority vote, accept, deny or modify the Application.

H. The conditions set forth in Section E(1)-(4) may be waived for any tree that is imminently hazardous to any existing building, sidewalk, driveway or public street if, in the opinion of the Building Inspector or the Chairman of the Board of Zoning Adjustment, an emergency exists; provided, further, that the Building Inspector or Chairman of the Board of Zoning Adjustment must file, within ten (10) days following a waiver under this Section, a written statement with the Board of Zoning Adjustment setting forth the reasons for the waiver.

I. The Board of Zoning Adjustment shall have the authority to prohibit the removal or destruction of any tree or to impose conditions or restrictions with regard to any Application appealed to it to insure compliance with this Ordinance or to preserve environmental, aesthetic or historic characteristics of the land or to

protect adjacent property. If conditions or space allows replacement of trees and/or other landscaping, then the Board of Zoning Adjustment may impose a replacement of some or all trees destroyed or removed. In addition to any conditions or restrictions which the Board of Zoning Adjustment may impose, the following conditions shall be attached to every Permit whether issued by the Building Inspector or the Board of Zoning Adjustment:

1. If trees are to be removed in anticipation of construction for which a Building Permit is required, all documents required under Section 8 of this Zoning Ordinance for such construction, as well as any other drawings, plans and/or blueprints as may be required by the Building Inspector, shall be submitted to and approved by the Building Inspector before any tree is removed pursuant to a Tree Removal Permit, except as may be otherwise provided by the Board of Zoning Adjustment; and
2. When trees are to be replanted, this must take place within nine (9) months following the issuance of the Permit; provided, however, that the time for replanting may be extended for an additional three (3) months by either the Building Inspector or the Chairman of the Board of Zoning Adjustment upon showing that the delay in compliance is not due to the owner's negligence.

J. A Permit shall be valid for one (1) year following its issuance by either the Building Inspector or the Board of Zoning Adjustment.

K. In the event the recipient of a Permit fails to comply with the provisions of Section I above, the Permit will, without any further action by either the Building Inspector or the Board of Zoning Adjustment, be deemed void and, further, will be considered as never having been issued. With respect to such voided permit, the Building Inspector shall make an immediate inspection of the site and if any tree has been destroyed or removed, he shall refer the matter to the City Attorney for prosecution as permitted hereinafter.

L. The Building Inspector shall maintain a record of all Applications for Tree Removal Permits sorted by legal description and by street address. Every Application that is submitted shall be cross referenced against this record. Any prior tree removal or destruction activity shall be noted on the current Application.

M. In its discretion, the Board of Zoning Adjustment may require that an applicant for a Permit comply with the notice requirements of Section 8-2 of this Zoning Ordinance.

N. Each tree which is removed or destroyed without a valid Permit or each tree which is removed or destroyed pursuant to a Permit which has been deemed void under Section K above, shall be treated as a separate offense and shall be subject to the fines and penalties as set out in Section 8-3 of this Zoning Ordinance.

O. In the event an Applicant's construction is situated such that excavation, fill and/or foundation falls within a tree's drip line (See A-3 Destroy definition), but Applicant and Building Inspector are desirous of trying to save said tree, then construction will be allowed to proceed without threat of fines and penalties as set out in Section 8-3, should said tree subsequently die. Applicant will be required to replace such tree(s) that subsequently dies as a result of construction, however, Permit shall note any special consideration as described in this Section.

SECTION 2: That all ordinances and parts of ordinances in conflict herewith are repealed to the extent of such conflict.

SECTION 3: That if any part of this Ordinance is found deficient for any reason whatsoever by a court of record having jurisdiction, that finding shall not affect the remaining parts of said Ordinance.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS THIS 14th DAY OF October, 1997.

APPROVED:

Barbara O'Harris

Barbara O'Harris, Mayor

ATTEST:

Mary Ann Lee

Mary Ann Lee, Clerk