

ORDINANCE NO. 1648 AMENDED

AN ORDINANCE ADDING A NEW CHAPTER, 9.22, "RETAINING WALLS," TO THE EUREKA SPRINGS MUNICIPAL CODE REGARDING NUISANCES

WHEREAS, the State Legislature has provided that the City Council shall have the care, supervision and control of all public highways and shall cause those public highways be kept open and in repair and free from nuisance, (A.C.A. 14-301-101). Furthermore, the State has authorized municipalities to cause sidewalks to be maintained by the property owners; and,

WHEREAS, the City of Eureka Springs has a number of retaining walls situated throughout the City that abut or are adjacent to public rights-of-ways, and some retaining walls are in disrepair requiring maintenance and repair; and,

WHEREAS, the City Council has determined it is in the best interests of the City to have a policy requiring public rights-of-ways to be kept open and free from the nuisance of unsafe retaining walls that create a hazard to vehicular and pedestrian traffic traveling over said ways; and,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Eureka Springs, Arkansas:

Section 1

That Title 9 of the Municipal Code is amended by the addition thereto of a new chapter, Chapter 9.22, entitled "Retaining Walls":

9.22.01. Definitions.

- (a) Retaining Wall. A wall built to resist lateral pressure other than wind pressure-- especially one to prevent an earth slide.
- (b) Repair. To maintain or to reconstruct in a safe or better condition, and in accordance with all City ordinances, using the same or similar materials in such a manner as to not alter the former appearance.
- (c) Nuisance. Whenever a retaining wall has deteriorated or is in a state of disrepair to the extent that it is a hazard to vehicular and/or pedestrian traffic on any public right-of-way, the same shall be declared a nuisance.
- (d) Public Right-of-Way. A path or thoroughfare owned by the City that is intended for public use.

9.22.02. Retaining Wall.

All property owners in the City who have a retaining wall that abuts or is adjacent to any public right-of-way shall maintain said wall in such a state of good repair as to keep public rights-of-ways open and free from the nuisance of unsafe retaining walls.

9.22.03 Notice.

- (a) If the Building Inspector, after consultation and in agreement with the Director of Public

Works, determines that a retaining wall is unsafe and creating a hazard, he or she shall serve notice upon the property owner that the retaining wall is unsafe and is creating a nuisance; and it shall be the responsibility, except as set out in 9.22.07, of the property owner to repair the retaining wall.

(b) If the Building Inspector and Director of Public Works cannot agree, as per par. (a) above, then the City Council shall make a determination.

(c) Whenever any retaining wall shall become unsafe or otherwise in a state of disrepair so as to create a nuisance, the Building Inspector shall cause a printed or written notice to be served upon the owner of the property and that said notice will indicate what repairs are to be made and the time within which such improvements are required to be completed. The notice may be served by registered mail, or by the Building Inspector, whose endorsement upon said notice shall be sufficient evidence of his or her action in the premises, or in any manner provided for by law.

9.22.4 Penalty.

Any property owner who shall fail to repair said nuisance in the manner and within the time prescribed in the Notice shall be subject to a fine of not less than fifty dollars (\$50.00) nor more than two hundred and fifty dollars (\$250.00) for each offense; and each day said nuisance is allowed to continue after the time prescribed in the notice shall be deemed as a separate and distinct offense.

9.22.05 Refusal to Comply.

If the property owner shall fail or refuse to comply with the provisions hereof, the City shall take whatever steps it deems necessary to abate said nuisance so that the public right-of-way can be kept open and free from nuisance.

9.22.06 Lien.

If the City causes the nuisance to be abated, all costs incidental to the abatement of the nuisance shall constitute a charge against the owner of the property and shall be a lien on the property from the date of the commencement of the work. Notice of the lien and enforcement of the lien shall be given in any manner provided for by law.

9.22.07 City Participation.

(a) If the City is the entity that constructed, or caused to be constructed, the retaining wall, the City shall be solely responsible for repairing the retaining wall and the payment of all costs incidental to the repair.

(b) If the City and the property owner constructed the retaining wall, each shall be responsible for one-half of all costs incurred in the repair thereof.

(c) If the City did not cause the retaining wall to be constructed or did not participate in its construction, the property owner shall be responsible for its repair without any participation by the City.

(d) If the retaining wall supports a public right-of-way, or is otherwise necessary to keep said right-of-way open and free from the nuisance of an unsafe retaining wall, it shall be the responsibility of the City to repair said retaining wall.

Section 2

All ordinances and parts of ordinances in conflict herewith are repealed to the extent of said conflict.

Section 3

If any part of this ordinance is declared invalid for any reason whatsoever, it shall not affect the remaining portions thereof.

**PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF
EUREKA SPRINGS, ARKANSAS, THIS 11TH DAY OF APRIL, 1995.**

APPROVED:


Barbara A. O'Harris, Mayor

ATTEST:


Mary Ann Lee, City Clerk/Treasurer

