

*Failed on
1st Reading.
3.26.96*

ORDINANCE NO. 1689

AN ORDINANCE AMENDING CHAPTER 9.22, "RETAINING WALLS," OF THE MUNICIPAL CODE

WHEREAS, the City Council of the City of Eureka Springs, Arkansas, has determined it is in the best interests of the City to amend Chapter 9.22, "Retaining Walls"; and,

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

**Section One: Section 9.22.07,
"City Participation," To Be Amended**

Section 9.22.07, "City Participation," Paragraph (d) is hereby amended to read:

(d) If, after reasonable effort, it is not possible to determine which party caused the retaining wall to be constructed, then the primary purpose of the wall shall be the determining factor on participation in maintenance and repairs as follows:

- (1) If a retaining wall supports a public right-of-way or a city-owned property, the City shall be solely responsible for maintaining the retaining wall and for payment of all repair costs.
- (2) If a retaining wall supports privately owned property, the property owner shall be solely responsible for maintaining the retaining wall and for payment of all repair costs.
- (3) If a retaining wall supports privately owned property and City-owned utilities, the property owner and the City may mutually agree to maintain the retaining wall and to share repair costs. Such mutual agreement shall specify the terms of the agreement in written form and be signed by the parties.

Section Two

All ordinances and parts of ordinances in conflict herewith are repealed to the extent of said conflict.

Section Three

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 ___TH DAY OF _____, 1996.**

APPROVED:

ATTEST:

Barbara A. O'Harris, Mayor

Mary Ann Lee, City Clerk

me
3-19-96

city of eureka
springs



public works department
44 south main
eureka springs, arkansas 72632
(501) 253-9600
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office of the director

Kirby Murray

March 5, 1996

Dear Mayor O'Harris and City Council:

When the subject of a retaining wall ordinance was first discussed, it was my desire to put into writing that which was being practiced when I started working for the City in 1978. When the Public Works Department was involved, the concept of "If it supports your property it is yours, and if it supports our property it is ours" has, in every case but Howell St., been successfully implemented. During my time of employment, on two occasions the cost of rebuilding a wall was shared between the City and the property owner. This was due to the fact that City-owned utilities would have been threatened if the walls remained down.

During the two years of discussion on this subject I have given you, Mayor O'Harris, and a few Council members a tour in order to witness, first hand, that walls are not necessary on the uphill sides of streets. The sole purpose of such walls is to improve the property they support. Otherwise, they are simply hillsides. This opinion was mirrored by McClelland Engineering when that firm was asked to assess the situation on Howell St.

Recently, a committee was formed in order to make a recommendation as to how the ordinance should read. The members of this committee were Sheila Seratt, Chris Riker, and me. We unanimously agreed and did recommend to the City Council that the ordinance read as stated in the enclosure dated September 25, 1995.

As you will see in the photographs provided, there is ample evidence of hillsides with no retaining walls to support them. See comments on back of photographs.

Other photographs show the Howell St. wall continuing up the hill and actually turning into a wall with windows. That is the wall of the basement room which also supports the apartment building above. It then continues on to support a yard.

Another deteriorating wall by Basin Park also supports the brick restaurant above it.

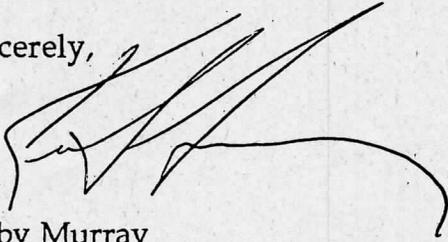
A wall near the intersection of French and Howell was dismantled by the property owner for repair. This action caused the multi-story house and balconies to settle and slide several inches. The balconies have been removed, the house is being jacked up and anchored, and a new retaining wall is being poured. Tens of thousands of dollars will have been spent when this project is completed.

The remainder of these few photos are more examples of walls that create a level spot for privately owned yards or buildings. Yet all will pose a threat or create a nuisance to a public thoroughfare eventually. Currently, according to chapter 9.22 section 9.22.07 paragraph (d) the City is solely responsible for all of these walls.

If the City continues to operate under this current ordinance, or adopts the amendment that Councilman Earngey has suggested, I feel, to borrow one of Mr. Earngey's comments, that "The City will be playing football without a helmet". The City will be paying for repairs of private property, the citizens will be in an uproar because of this, and the costs will be crippling.

The original recommendation from the committee is concise and leaves no question which could become a legal entanglement. I urge you to amend the ordinance accordingly.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kirby Murray', with a long, sweeping underline that extends to the right.

Kirby Murray

city of eureka
springs



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Kirby Murray

September 25, 1995

Following is a suggestion for amending Ordinance #1648, Retaining Walls:

To replace "Definition (a)" as stated in the April 11, 1995 Ordinance:

9.22.01 Definitions

(a) Retaining Wall. A wall built to resist lateral pressure, to keep or hold property in a specific location.

To replace "City Participation" in its entirety:

9.22.07 Responsibility

(a) If the retaining wall in question supports a City street, walkway, or property, the City shall be solely responsible for repairing the retaining wall and for payment of all costs incidental to the repair.

(b) If the retaining wall in question supports a property other than that which belongs to the City, the owner of that property shall be responsible for repairing the retaining wall and for payment of all costs incidental to the repair.

(c) If the wall supports private property and also supports City utilities, the owner of the private property may enter into an agreement with the City to share in the expenses of repairing the wall. Said agreement shall be in writing and specify the percentages of involvement for each party.