

RE: Home Rule Charter Review Commission Proposed Amendments to the City Charter

Background:

In March of 2022, City Council appointed nine members to the Home Rule Charter Review Commission, in compliance with the rules set forth by the charter. The Commission has been meeting periodically to review the charter since being appointed. The Commission has completed their review of the Home Rule Charter and will be giving a presentation with their proposed propositions at the next city council meeting.

Analysis:

The Home Rule Charter Commission will be presenting three propositions to be taken to the voters of the City of Nixa. Those propositions are as follows:

Proposition 1

Shall Section 3.7 of the Nixa City Charter be amended as set forth in Ordinance No. _____ to grant the City Council the power to remove elected officers from office when the officer has been charged with conduct constituting grounds for forfeiture of office?

Proposition 2

Shall Article VI and Section 15.2 of the Nixa City Charter be amended as set forth in Ordinance No. _____ to modify said provisions to account for changes to Missouri law regarding Municipal Courts by: (1) modifying Article VI to authorize the Council to establish a Municipal Court or elect to have ordinance violations heard by a Circuit Judge; (2) require the Council to review the decision to have a Circuit Judge hear ordinance violations every four years; (3) authorize the position of an elected chief Municipal Judge, who shall be the presiding judge of the Municipal Court; (4) allow for the Council to establish elected Associate Judges; (5) include incapacitation as grounds for vacancy in the office of Municipal Judge; (6) authorize the Council to appoint substitute judges to act in the absence or conflict of interest in a Municipal Judge; (7) provide an applicability clause for Section 6.2 of the Charter; (8) remove Section 6.3 in its entirety; and (9) remove Section 15.2(d) in its entirety?

Proposition 3

Shall Section 10.3 of the Nixa City Charter be amended as set forth in Ordinance No. _____ to modify section 10.3(a)iii to require recall petitions to receive signatures from 10% of qualified voters registered to vote in the last election for such office instead of 10% of total votes cast in the last election for such office and remove unconstitutional language in section 10.3(c) regarding the voting and residency status of circulators?

Recommendation:

Staff has reviewed the propositions and would recommend City Council consider passing the ordinance submitting the proposed amendments to the City Charter to the voters of the City of Nixa.

MEMO PREPARED BY:

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1 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA CALLING AN ELECTION
2 TO BE HELD ON APRIL 4, 2023, TO SUBMIT TO THE QUALIFIED VOTERS OF THE
3 CITY SEVERAL PROPOSED AMENDMENTS TO THE CITY CHARTER;
4 AUTHORIZING THE CITY CLERK TO DO ALL THINGS NECESSARY AND
5 CONVENIENT TO SUBMIT THE PROPOSED AMENDMENTS TO THE QUALIFIED
6 VOTERS OF THE CITY; AND PROVIDING FOR THE ENACTMENT OF SAID
7 AMENDMENTS IF APPROVED.
8
9

10 WHEREAS pursuant to Section 13.8 of the City Charter, the City Council, by
11 passage of Ordinance No. 2249 on March 14, 2022, established a Charter Review
12 Commission; and
13

14 WHEREAS said Commission was charged with reviewing the City Charter and
15 recommending any amendments to the Charter the Commission deems advisable; and
16

17 WHEREAS the Commission began its work on April 12, 2022; and
18

19 WHEREAS the Commission reported on its proposed amendments to the Council
20 at its regular meeting of November 14, 2022; and
21

22 WHEREAS pursuant to Article VI, Section 20 of the Missouri Constitution and
23 Section 13.8 of the City Charter, the City Council desires to submit to the qualified voters
24 of the City the proposed amendments contained herein, which were deemed advisable
25 by the Commission.
26

27 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
28 NIXA, AS FOLLOWS, THAT:
29

30 SECTION 1: The following proposition shall be placed on the ballot and submitted
31 to the qualified voters of the City at the General Municipal Election to be held on April 4,
32 2023:

33 PROPOSITION 1
34

35 Shall Section 3.7 of the Nixa City Charter be amended as set forth in
36 Ordinance No. _____ to grant the City Council the power to remove
37 elected officers from office when the officer has been charged with conduct
38 constituting grounds for forfeiture of office?
39

40 Yes []

41 No []
42

43 Instructions to Voters: If you are in favor of the proposition, place an X in
44 the box opposite "YES." If you are opposed to the proposition, place an X
45 in the box opposite "NO."
46

47 **SECTION 2:** The amendment to Section 3.7 of the Nixa City Charter, proposed in
48 Section 1 of this Ordinance, shall read as follows:

49
50 (Note: Language which is underlined is to be added to the existing provision. Language
51 which has been ~~stricken~~ is to be removed from the existing provision.)

52
53 Section 3.7 Judge of Qualifications

54
55 The Council shall be the judge of the election and qualifications of all officers elected by
56 the voters under this charter ~~its members~~ and of the grounds for forfeiture of their office
57 and for that purpose shall have power to subpoena witnesses, administer oaths and
58 require the production of evidence. An officer ~~A member~~ charged with conduct
59 constituting grounds for forfeiture of his or her office shall be entitled to a public hearing
60 on demand. Decisions made by the Council under this section shall be subject to review
61 by the courts.

62
63 **SECTION 3:** The following proposition shall be placed on the ballot and submitted
64 to the qualified voters of the City at the General Municipal Election to be held on April 4,
65 2023:

66 PROPOSITION 2

67
68 Shall Article VI and Section 15.2 of the Nixa City Charter be amended as
69 set forth in Ordinance No. _____ to modify said provisions to account
70 for changes to Missouri law regarding Municipal Courts by: (1) modifying
71 Article VI to authorize the Council to establish a Municipal Court or elect to
72 have ordinance violations heard by a Circuit Judge; (2) require the Council
73 to review the decision to have a Circuit Judge hear ordinance violations
74 every four years; (3) authorize the position of an elected chief Municipal
75 Judge, who shall be the presiding judge of the Municipal Court; (4) allow for
76 the Council to establish elected Associate Judges; (5) include incapacitation
77 as grounds for vacancy in the office of Municipal Judge; (6) authorize the
78 Council to appoint substitute judges to act in the absence or conflict of
79 interest in a Municipal Judge; (7) provide an applicability clause for Section
80 6.2 of the Charter; (8) remove Section 6.3 in its entirety; and (9) remove
81 Section 15.2(d) in its entirety?

82
83 Yes []

84 No []

85
86 Instructions to Voters: If you are in favor of the proposition, place an X in
87 the box opposite "YES." If you are opposed to the proposition, place an X
88 in the box opposite "NO."

89
90 **SECTION 4:** The amendment to Article VI and Section 15.2 of the Nixa City
91 Charter, proposed in Section 3 of this Ordinance, shall read as follows:

92

93 (Note: Language which is underlined is to be added to the existing provision. Language
94 which has been ~~stricken~~ is to be removed from the existing provision.)

95
96 Article VI. Municipal Court

97
98 Section 6.1 Municipal Court Authorized to be established by ordinance.

99
100 The council may provide for a Municipal Court by ordinance which shall have jurisdiction
101 to hear violations of the city’s ordinances. The Municipal Court so established shall be
102 subject to the provisions of this Article, the rules of the Missouri Supreme Court, and
103 applicable state law. Notwithstanding the foregoing, the Council, in lieu of establishing a
104 Municipal Court by ordinance, may elect to have violations of the City’s ordinances heard
105 and determined by a judge of the circuit court, as authorized by state law. Should the
106 Council elect to have violations of the City’s ordinances heard and determined by a judge
107 of the circuit court, then the Council shall review the feasibility of establishing a Municipal
108 Court by ordinance, as provided for herein, every four years.

109
110 ~~Section 6.1 Jurisdiction~~

111
112 ~~There shall be a Municipal Court which shall have jurisdiction to hear and determine all~~
113 ~~cases involving alleged violations of ordinances of the city, and to assess punishment, by~~
114 ~~fine or incarceration, as therein provided. This court is a continuation of the municipal~~
115 ~~court of the city as previously established and shall be known as the "Nixa Municipal~~
116 ~~Court, a Division of the 38th Judicial Circuit Court of the State of Missouri." The Municipal~~
117 ~~Court shall be subject to the rules of the Missouri Supreme Court and the Circuit Court of~~
118 ~~which it is part.~~

119
120 Section 6.2 Judges

121
122 ~~The Municipal Court shall have its own judge.~~

123
124 (a) *Election and Terms.* The Chief Municipal Judge judge shall be elected, by the qualified
125 voters of the City, to serve a two-year term as provided by Section 15.2(d), Election
126 of City Officials; Municipal Judge. The Chief Municipal Judge shall be the presiding
127 judge of the municipal court. The Council may provide for associate number of
128 Municipal Judges and corresponding divisions of the Municipal Court may be changed
129 by ordinance and without further amendment of amending the Charter, provided said
130 changes shall would not take effect before the expiration of the affected term.
131 Additional judges shall also be elected, by the qualified voters of the City, to two-year
132 terms on a cycle to be determined by the ordinances creating such additional judicial
133 positions.

134
135 (b) *Powers and Duties.* The Municipal Judge shall have such powers and duties as are
136 conferred upon such officers by law or by ordinance.
137

- 138 (c) Qualifications. All Municipal Judges shall be a licensed members of the Missouri Bar,
139 and shall have been in active practice of law in the State of Missouri for at least three
140 years immediately preceding his or her election.
141
- 142 (d) *Prohibition*. No Municipal Judge shall hold any other Nixa City office or City
143 employment during the term for which the judge was elected, and no former Municipal
144 Judge shall hold any compensation appointive Nixa City office or City employment
145 until one year after the expiration of the term for which the judge was elected.
146
- 147 (e) *Vacancies*. An office of Municipal Judge shall become vacant upon the judge's death,
148 incapacitation, resignation, recall or removal from office in any manner authorized by
149 this Charter or by law, or upon forfeiture of the office.
150
- 151 (f) *Forfeiture of Office*. A Municipal Judge shall forfeit office: (1) if at any time during the
152 term of office he or she lacks any qualification for the office prescribed by this Charter
153 or by law, or (2) if the judge violates any prohibition as provided in Section 6.2(d),
154 Prohibition, or (3) if a judge willfully violated the requirements of Section 13.1,
155 Personal Financial Interest, (4) or if convicted of a crime involving moral turpitude.
156
- 157 (g) *Removal from Office*. Municipal judges may be removed from office in any manner
158 provided by law or the Rules of the Missouri Supreme Court.
159
- 160 (h) *Filling of Vacancies*. The Council by a majority of the entire Council shall appoint a
161 qualified person to fill a vacancy in the office of Municipal Judge until the next regular
162 municipal election as established by the Missouri election calendar in accordance with
163 state law, for which timely notice may be given, when a person will be publicly elected
164 by qualified voters to serve the remainder of any unexpired term.
165
- 166 (i) *Compensation*. Compensation of Municipal Judges shall be determined by ordinance,
167 and shall not be dependent in any way upon the number of cases tried, the number of
168 guilty verdicts reached, or the amount of fine imposed or collected. No change in
169 compensation of an incumbent Municipal Judge shall become effective during that
170 judge's term of office.
171
- 172 (j) The Council may appoint substitute judges to act as Municipal Judges during the
173 temporary absence of an elected Municipal Judge or in the event of a conflict of
174 interest of an elected Municipal Judge. Except for the two-year term requirement and
175 the requirement that compensation be determined by ordinance, such substitute
176 judges shall meet the other qualifications and requirements of this Section.
177
- 178 (k) Should the Council elect to have violations of the City's ordinances heard and
179 determined by a judge of the circuit court, as authorized by state law then the
180 provisions of this Section shall not be applicable.
181

182 Section 6.3 Court Administration
183

184 ~~The Council shall provide for a Court Administrator, clerks and other personnel for the~~
185 ~~Municipal Court, with management appointed by the City Administrator. Said~~
186 ~~management shall appoint, suspend, or remove and render the annual performance~~
187 ~~review of the Court Administrator, Clerks and other personnel for the Municipal Court. All~~
188 ~~personnel of the Municipal Court shall be subject to the administrative policies and~~
189 ~~procedures of the city, except as otherwise provided by law.~~

190
191 Section 15.2 Election of City Officials
192

193 (a) Incumbents. All officials elected on April 6th, 2010 shall serve a one (1) year term. All
194 officials elected prior to April 6th, 2010 who would continue in office shall continue in
195 office for the duration of the term to which they were elected.
196

197 (b) At the municipal election in April of 2011 Council Members shall be elected to serve
198 staggered three (3) year terms. At the first election under this charter, six (6) Council
199 Members shall be elected. Of the Council Members elected at the first such election,
200 one (1) Council Member from Districts one (1) and two (2) shall serve only one (1)
201 year terms; one (1) Council member from districts two (2) and three (3) shall serve
202 only two (2) year terms; and one (1) Council Member from Districts three (3) and one
203 (1) shall serve three (3) year terms. Subsequent to the April 2011 election, the Council
204 Member shall be elected to fill the positions of those whose terms expire and shall
205 serve full three (3) year terms.
206

207 (c) At the municipal election in April of 2011 and every third year thereafter, the Mayor
208 shall be elected to serve a full three (3) year term.
209

210 ~~(d) At the municipal election in April of 2011 a qualified person shall be elected Judge of~~
211 ~~the City of Nixa and every second year thereafter, the Judge shall be elected to serve~~
212 ~~a full two (2) year term.~~
213

214 **SECTION 5:** The following proposition shall be placed on the ballot and submitted
215 to the qualified voters of the City at the General Municipal Election to be held on April 4,
216 2023:

217 PROPOSITION 3
218

219 Shall Section 10.3 of the Nixa City Charter be amended as set forth in
220 Ordinance No. _____ to modify section 10.3(a)iii to require recall
221 petitions to receive signatures from 10% of qualified voters registered to
222 vote in the last election for such office instead of 10% of total votes cast in
223 the last election for such office and remove unconstitutional language in
224 section 10.3(c) regarding the voting and residency status of circulators?
225

226 Yes []
227 No []
228

229 Instructions to Voters: If you are in favor of the proposition, place an X in
230 the box opposite "YES." If you are opposed to the proposition, place an X
231 in the box opposite "NO."
232

233 **SECTION 6:** The amendment to Section 10.3 of the Nixa City Charter, proposed
234 in Section 5 of this Ordinance, shall read as follows:
235

236 (Note: Language which is underlined is to be added to the existing provision. Language
237 which has been ~~stricken~~ is to be removed from the existing provision.)
238

239 Section 10.3 Petitions

240

241 (a) Number of Signatures

242

243 i. *Initiative.* An initiative petition shall be signed by qualified voters of the City equal
244 in number to at least seven percent (7%) of the total number of qualified voters
245 registered to vote at the last regular municipal election.
246

247 ii. *Referendum.* A referendum petition shall be signed by qualified voters of the City
248 equal in number to at least ten percent (10%) of the total number of qualified voters
249 registered to vote at the last regular municipal election.
250

251 iii. *Recall.* A recall petition shall be signed by qualified voters for that office in number
252 equal to at least ten percent (10%) of the total number of qualified voters registered
253 to vote at the last regular municipal election ~~votes cast for the office in the election~~
254 ~~at which that office was elected.~~
255

256 (b) *Form and Content.* All papers of a petition shall be uniform in size and style and shall
257 be assembled as one instrument for filing. Each signature shall be executed in ink or
258 indelible pencil and shall be followed by the address of the person signing. Initiative
259 and referendum petitions shall contain or have attached thereto throughout their
260 circulation the full text of the ordinance proposed or sought to be reconsidered. A recall
261 petition shall state the name and title of office of the elected official sought to be
262 recalled and the general reason(s) for recall on the top and bottom of all pages of the
263 petition. No petition shall seek the recall of more than one officer, but several
264 propositions for recall may be separately submitted at the same election on the same
265 ballot.
266

267 (c) *Notarized affidavit of Circulator.* When filed, each paper of a petition shall have
268 attached to it a notarized affidavit executed by the circulator thereof stating that the
269 circulator personally circulated the paper, the number of signatures thereon, that all
270 the signatures were affixed in the circulator's presence, that the circulator believes
271 them to be the genuine signature of the persons whose names they purport to be, and
272 that each signer had an opportunity before signing to read the full text of the ordinance
273 proposed or sought to be reconsidered. A petition circulator need not be a member of

274 the petitioners' committee, but shall be a qualified voter. Failure of the circulator to be
275 a qualified voter shall render any petition the circulator has obtained invalid.

276
277 (d) *Time for Filing Petitions.*

- 278
279 i. *Initiative.* An initiative petition shall be filed within ninety (90) calendar days of the
280 issuance of the appropriate petition forms to the petitioners' committee.
281
282 ii. *Referendum.* A referendum petition shall be filed within ninety (90) calendar days
283 after adoption by the Council of the ordinance sought to be reconsidered.
284
285 iii. *Recall.* A recall petition shall be filed within ninety (90) calendar days of the
286 issuance of the appropriate petition forms to the petitioners' committee.
287

288 **SECTION 7:** The City Clerk is authorized and directed to notify the Clerk of
289 Christian County, Missouri of the adoption of this Ordinance as soon as practicable, but
290 no later than 5:00 p.m. on the tenth Tuesday prior to April 4, 2023, and to include in said
291 notification all of the terms and provisions required by Chapter 115, RSMo., or any other
292 provision of law. The City Clerk is further authorized and directed to do all things
293 necessary or convenient to ensure that the propositions contained in this Ordinance are
294 properly submitted to the voters on April 4, 2023, including, without limitation, submitting
295 a different ballot, so long as the propositions submitted to the voters are substantially the
296 same as the propositions authorized by this Ordinance.
297

298 **SECTION 8:** The Clerk of Christian County, Missouri is hereby authorized to
299 conduct an election in a manner consistent with the provisions of Chapter 115, RSMo.
300

301 **SECTION 9:** The City Administrator, and other officers of the City, are hereby
302 authorized and directed to take such actions as may be necessary or convenient to carry
303 out the purpose and intent of this Ordinance.
304

305 **SECTION 10:** Upon approval, by the qualified voters of the City, of the propositions
306 herein submitted to the qualified voters by this Ordinance, and upon the canvassing and
307 declaration of the election results by the Council, the City's Charter shall be amended
308 provided that the required majority was obtained for a proposition. The City Clerk shall
309 thereafter codify the amendments to the City Charter so approved and provide certified
310 copies of this Ordinance and the Council's action canvassing and declaring the results of
311 said election to the Secretary of State and shall additionally keep such certified
312 documents as part of the permanent records of the City.
313

314 **SECTION 11:** Once this Ordinance is in full force and effect, the Ordinance number
315 assigned to this Ordinance by the City Clerk shall be placed in the blank spaces
316 referencing said number located in Sections 1, 3, & 5.
317

318 **SECTION 12:** This Ordinance shall be in full force and effect from and after its final
319 passage by the City Council and after its approval by the Mayor, subject to the provisions
320 of section 3.11(g) of the City Charter.

321
322

323 **ADOPTED BY THE COUNCIL THIS _____ DAY OF _____ 2022.**

324
325
326

ATTEST:

327 _____
328 PRESIDING OFFICER

CITY CLERK

329
330

331 **APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2022.**

332
333

ATTEST:

334
335 _____
336 MAYOR

CITY CLERK

337
338

339 APPROVED AS TO FORM:

340
341

342 _____
CITY ATTORNEY