



**Issue:** COUNCIL BILL #2022-032 FRANCHISE AGREEMENT FOR SPIRE

**Date:** 03.04.2022

**Submitted By:** Doug Colvin  
Assistant City Administrator – Director, Nixa Utilities and Public Works

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### Background

Pursuant to Article XI of the City Charter, City Council is authorized to grant public franchises or privileges and Spire Missouri Inc. (“Spire”) has approached the city with a request for a new twenty-year franchise.

### Analysis

It is typical for third party utility companies to seek permission to use public rights-of-way and City owned utility easements for placement of their distribution facilities to serve their customers located within the City. Such permission is granted by the local governing body with approval of a Franchise Agreement.

Spire, formerly Missouri Gas Energy, is the local natural gas utility company that serves the city and citizens. Spire has had the privileges for many years to utilize public rights of way and seeks to continue that arrangement for a twenty-year period.

As set forth in the Nixa City Charter, a franchise can only be granted by Ordinance and for no more than 20 years. Because of the significant investment of gas distribution facilities, a long-term agreement is requested by Spire.

Staff has identified no violations during the previous franchise and does not anticipate any in the future.

### Recommendation

Staff recommends passing Council Bill #2022-032 to a second reading at your next meeting. Provided there are any questions or concerns, staff is available to address them.

1 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA GRANTING A**  
2 **FRANCHISE TO OPERATE A NATURAL GAS DISTRIBUTION SYSTEM WITHIN**  
3 **THE CITY TO SPIRE MISSOURI INC.**

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6 **WHEREAS** Section 82.230 RSMo., grants constitutional charter cities the  
7 authority to grant, regulate, and control the exercise of any public franchise or privilege  
8 involving the use of the streets or public ways of such cities; and  
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10 **WHEREAS** the City Council, pursuant to Article XI of the City Charter, is  
11 authorized to grant public franchises or privileges; and  
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13 **WHEREAS** Spire Missouri Inc. (“Spire”) has approached the City with a request  
14 to extend the franchise granted to Spire for an additional twenty-year term; and  
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16 **WHEREAS** the City Council desires to extend said franchise to Spire under the  
17 terms and conditions provided in this Ordinance.  
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19 **NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**  
20 **NIXA, AS FOLLOWS, THAT:**  
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22 **SECTION 1:** The right, permission and authority, for a period of twenty years, is  
23 hereby granted to Spire Missouri Inc., a corporation of the State of Missouri (hereinafter  
24 referred to as “Spire”), its successors and assigns, to construct, reconstruct, excavate for,  
25 place, replace, extend and maintain all necessary or appropriate mains, service pipes,  
26 conduits, conductors, vaults, vaporizers, regulators, meters, sensors, routers, poles,  
27 antennae, and any and all other equipment, appurtenances and fixtures as may be  
28 reasonably necessary or desirable in the operation of a natural gas distribution system,  
29 in, along, across, over and under the streets, roads, alleys, sidewalks, squares, and  
30 bridges within the corporate limits of the City of Nixa, as now established or as may be  
31 hereafter extended, and areas dedicated to the City for public utility use, for the purpose  
32 of transmitting, furnishing, transporting and distributing natural gas for light, heat, power  
33 and other purposes within the City, and in territory adjacent to the City and for the purpose  
34 of transporting and transmitting natural gas through said City; all such equipment,  
35 appliances and apparatus to be installed and maintained with due regard to the rightful  
36 use by other persons with vehicles or otherwise, of the streets, roads, alleys, sidewalks,  
37 squares, bridges and other public places and areas dedicated to the City for public utility  
38 use; and exercise of the rights, permission and authority hereby granted shall at all times  
39 be subject to lawful regulation by the City in the exercise of its police powers. For  
40 purposes of this Ordinance, unless the context clearly indicates otherwise, the term “right-  
41 of-way” or “rights-of-way” shall include streets, roads, alleys, sidewalks, squares, bridges,  
42 and areas dedicated to the City for public utility use.  
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44 **SECTION 2:** Extensions of, and additions to, the distribution system maintained  
45 by Spire, its successors or assigns, in the City, shall be made in accordance with the rules  
46 and regulations governing such extensions and additions by Spire now on file with the

47 Public Service Commission of Missouri or in accordance with such amended rules and  
 48 regulations governing such extensions and additions by Spire, its successors or assigns,  
 49 as may hereafter become effective in the manner provided by law. The financial  
 50 responsibility for relocations of the Spire's facilities within the City's rights-of-way shall be  
 51 determined by State law as shall be specified by statute or common law at the time of the  
 52 relocation, and nothing herein shall be construed to confer upon Spire or the City any  
 53 rights inconsistent therewith. The City shall, prior to vacating any public right-of-way  
 54 containing any Spire facilities, notify Spire using reasonable means of the vacation. City  
 55 shall reasonably cooperate with Spire to obtain replacement rights but failure to acquire  
 56 such replacement rights shall not prohibit the City from proceeding with the vacation. .

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 58 **SECTION 3:** Spire shall indemnify and hold City harmless from all liability,  
 59 judgments, decrees, costs, expenses and attorneys' fees incurred or imposed on account  
 60 of injury or damage to persons or property arising from the negligent acts or omissions or  
 61 mismanagement of Spire or its subcontractors in the construction, reconstruction,  
 62 excavation, extension, restoration, or maintenance of the mains, service pipes, conduits,  
 63 conductors or other equipment in along, across, over or under any of the streets, roads,  
 64 alleys, sidewalks, squares, bridges or other public places in the City in the exercise of any  
 65 of the rights and privileges conferred by this ordinance.

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 67 **SECTION 4:** The rights, privileges and authority granted herein shall inure to and  
 68 be vested in Spire, its successors and assigns, successively, subject to all of the terms,  
 69 provisions and conditions herein contained, and each of the obligations hereby imposed  
 70 upon Spire shall devolve and be binding upon its successors and assigns, successively,  
 71 in the same manner.

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 73 **SECTION 5:** As consideration for the rights and privileges conferred by this  
 74 Ordinance, Spire shall, not later than February and August 1 respectively, provide a  
 75 report to the City of Spire's gross receipts from the transportation, distribution, and sale  
 76 of natural gas for domestic or commercial purposes within the corporate limits of the City  
 77 for the six month period since the last report and at the time of making such report shall  
 78 pay to City a sum equal to five percent of said gross receipts, or such other amount as  
 79 may be lawfully prescribed by ordinance from time to time. In addition, Spire shall pay  
 80 any applicable right-of-way management costs lawfully imposed by the City, subject to  
 81 provisions of section 67.1840 RSMo. Spire agrees to recognize the fees referenced in  
 82 this section as valid and binding and shall make the required payments.

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 84 **SECTION 6:** Spire shall, within thirty days after the passage and approval of this  
 85 Ordinance, file a memorandum detailing Spire's acceptance thereof with the City Clerk.  
 86 Upon receipt by the City Clerk of such a memorandum, the franchise granted herein shall  
 87 continue and remain in full force and effect for a period of twenty years.

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 89 **SECTION 7:** Neither acceptance of, nor compliance with, the provisions of this  
 90 Ordinance shall in anyways impair or affect, or constitute or be construed as a  
 91 relinquishment or waiver of any right, permission or authority which Spire, its successors  
 92 or assigns, may have independently of this Ordinance.

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**SECTION 8:** This Ordinance shall not relieve Spire of the obligation to comply with any lawful Ordinance now existing in the City or enacted in the future requiring Spire to obtain written permits or other approval from the City prior to commencement of construction of facilities within City right-of-way. Nothing in this Ordinance shall be construed as a limitation on the proper exercise of the City’s police power which may be exercised by the City in the management of its property, including rights-of-way.

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**SECTION 9:** If any provision of this Ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

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**SECTION 10:** The public franchise granted herein is expressly subject to the provisions of Article XI, of the City Charter. The City Council, pursuant to said Article, maintains the rights and authorities provided for therein, including without limitation Section 11.2 thereof.

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**SECTION 11:** A covenant of good faith and fair dealing being implied into every Missouri contract, during the term of this Franchise, City shall not prohibit the connection of or service to new natural gas customers within its boundaries, nor take any action to require the discontinuance of natural gas service, other than as may be set forth in the rules and regulations of the Missouri Public Service Commission.

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

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**ADOPTED BY THE CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022.**

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ATTEST:

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\_\_\_\_\_  
CITY CLERK

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PRESIDING OFFICER

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**APPROVED BY THE MAYOR.**

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ATTEST:

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CITY CLERK

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MAYOR

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APPROVED AS TO FORM:

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DATE OF APPROVAL

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CITY ATTORNEY

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