

## **RE: First Reading Council Bill #2023-06- An Ordinance modifying City Code Section 22-284 – Vegetation Management**

### **Background:**

This proposed code revision brings our Vegetation Management policy into compliance with authorizing law and provides clear direction for City Staff when trimming trees and other vegetation around city infrastructure.

The code also delegates responsibility to the Director of Public Works, or their designee, to carry out the provisions of this Section and promulgate additional policies and procedures provided that the additional policies and procedures do not conflict with the code.

### **Analysis:**

The city trims, removes limbs, and removes trees and other vegetation along the easements and public rights-of-way of the city so that trees and other vegetation do not come in contact with, prevent access to, or otherwise disrupt, or are apt to disrupt, the city's electric transmission and distribution system. The purpose of managing vegetation in such a way is to ensure the public's safety, employees' safety, and provide a reliable electric service for the customers of the city's electric utility.

Staff has reviewed the current adopted tree trimming code in relation to clearance space for energized electric lines and found it deficient. The proposed changes included in the attached Council Bill provide city staff direction for trimming operations differentiating between infrastructure that exist within a public right of way or easement and that which does not have a recorded easement.

In the case of infrastructure located within an easement, clearance rights are designated within the extent of the easement only unless there is specific permission from the directly affected property owner. In the case of infrastructure located outside a dedicated easement or right of way, trimming is authorized by rules based on the voltage of the energized lines as set forth by the Federal Energy Regulatory Commission (FERC) or an Electric Reliability Organization authorized by the Energy Policy Act of 2005, 16 U.S.C Section 824o. In Nixa's case, this organization is the North American Electric Reliability Corporation (NERC). As practice, we also frequently refer to the National Electric Safety Code as it also provides guidance beyond that of FERC or NERC.

Another section added to this code which was not addressed in the prior version is a responsibility of the city to remove a dead tree that died as a result of trimming operations by the city, at the city's expense. Though we do this as a matter of practice,

this code makes it a requirement thus providing our customers with an added level of assurance that it will be taken care of and not at their expense.

Though we are proposing these code changes for adoption, actual operations won't change significantly. This is more to align policy with practice. We will continue to have operational policies that we continue to refine for improved service and efficiency. These include policies such as how notifications to property owners are carried out, how we manage third-party tree trimming contractors, or how we negotiate trimming outside an easement with property owners such as our tree voucher program.

### **Recommendation:**

Staff intends to bring this back at the next Council meeting for a Second Reading with our recommendation for adoption. Until then, we are available to answer any questions or address any concerns.

Discuss and provide any further direction.

MEMO SUBMITTED BY:

**Doug Colvin** | Assistant City Administrator, Director Nixa Utilities and Public Works

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1 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AMENDING CHAPTER  
2 22, ARTICLE IV, DIVISION 1, SECTION 22-284 TO MODIFY PROVISIONS RELATED  
3 TO VEGETATION MANAGEMENT OF THE CITY’S ELECTRIC DISTRIBUTION  
4 SYSTEM.

5 \_\_\_\_\_  
6  
7 WHEREAS the City of Nixa operates a municipally owned electric distribution  
8 system; and

9  
10 WHEREAS the City engages in the trimming and removal of trees and other  
11 vegetation along the easements and public rights-of-way of the City to prevent such  
12 vegetation from disrupting the City’s electric distribution system; and

13  
14 WHEREAS the code amendments contemplated herein provide authority to bring  
15 the City’s vegetation management processes into compliance with Section 537.340  
16 RSMo.; and

17  
18 WHEREAS the City Council, after considering the amendments contained herein,  
19 desires to approve and adopt this Council Bill.

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21 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF  
22 NIXA, AS FOLLOWS, THAT:

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24 SECTION 1: Chapter 22, Article IV, Division 1, of the Nixa City Code is hereby  
25 amended by repealing section 22-284 in its entirety and adopting in lieu thereof a new  
26 section 22-284, which said section shall read as follows:

27  
28 (Note: Language to be added is indicated by being underlined. Language to be removed  
29 is indicated by being ~~stricken~~.)

30  
31 Sec. 22-284. ~~Trimming of trees and obstructions.~~ Authority to trim, remove, and control  
32 vegetation which could impact the city’s electric distribution system.

33  
34 (a) Purpose. The city trims, removes limbs, and removes trees and other vegetation along  
35 the easements and public rights-of-way of the city so that trees and other vegetation  
36 do not come in contact with, prevent access to, or otherwise disrupt, or are apt to  
37 disrupt, the city’s electric transmission and distribution system. The purpose of  
38 managing vegetation in such a way is to ensure the public’s safety and provide a  
39 reliable electric service for the customers of the city’s electric utility. For this reason,  
40 the city must limit the impact of vegetation as it relates to the propensity of unmanaged  
41 vegetation to cause service disruptions of the city’s electric system. This Section is  
42 established to provide authority for Director of Public Works, or their authorized  
43 designee, to ensure responsible management of the city’s electric transmission and  
44 distribution system and to affirm the city’s management responsibilities of maintaining  
45 and operating the electric transmission and distribution system in a safe, reliable, and

46 cost-effective manner while balancing the interests of property owners in maintaining  
47 trees and other vegetation on their property.

48  
49 (b) Authority to manage vegetation – procedures related thereto. The Director of Public  
50 Works, or their authorized designee, shall be authorized to trim, remove, or otherwise  
51 control trees and other vegetation which pose a hazard to the continued, safe, and  
52 reliable operation of the city’s electric transmission or distribution lines when:

53  
54 (1) Such trees or other vegetation are within the legal description of a recorded  
55 easement;

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57 (2) In the absence of a recorded easement, such trees or other vegetation are;

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59 a. Within ten feet, plus one-half the length of any attached cross arm, of either  
60 side of the centerline of electricity lines potentially energized at or below 34.5  
61 kilovolts measured line to line and located within the limits of the city; or

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63 b. Within thirty feet of either side of the centerline of electricity lines potentially  
64 energized at or below 34.5 kilovolts measured line to line and located outside  
65 the limits of the city; or

66  
67 c. Within fifty feet of either side of the centerline of electricity lines potentially  
68 energized between 34.5 and one hundred kilovolts measured line to line; or

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70 d. Within the greater of the following for any electricity lines potentially energized  
71 at one hundred kilovolts or more measured line to line; seventy-five feet to  
72 either side of the center line, or any required clearance adopted by either the  
73 Federal Energy Regulatory Commission or an Electric Reliability Organization  
74 authorized by the Energy Policy Act of 2005, 16 U.S.C Section 824o.

75  
76 (3) The trimming, removal, or controlling of any trees or other vegetation is necessary  
77 to maintain the continued safe and reliable operation of the city’s electric  
78 transmission or distribution lines; or

79  
80 (4) The trimming or removal of any tree or vegetation of sufficient height when such  
81 tree or vegetation, if it were to fall, would threaten the integrity and safety of the  
82 city’s electric transmission or distribution lines and would pose a hazard to the  
83 continued safe and reliable operation of said lines, however, prior to the removal  
84 of any tree or vegetation under the authority of this subsection 22-284(b)(4), the  
85 city shall notify the owner or occupier of land, if available, at least fourteen days  
86 prior to the removal unless the Director of Public Works, or their authorized  
87 designee, deems the removal to be immediately necessary to continue the safe  
88 and reliable operation of the city’s electricity lines, or such removal or trimming is  
89 required due to a major weather event or other emergency situation.

90

91 (c) City to remove partially trimmed tree – when. If any tree which is partially trimmed  
92 pursuant to the authority of this section 22-284 dies within three months as a result of  
93 said trimming, the owner or occupier of land upon which the tree was trimmed may  
94 request in writing that the city remove the tree at the city’s expense. Such request  
95 shall be acted upon within ninety days.

96  
97 (d) Delegation. The Director of Public Works, or their designee, is authorized and  
98 empowered to carry out the provisions of this Section and may promulgate additional  
99 policies and procedures therewith provided that said additional policies and  
100 procedures do not conflict with the provisions of this Section.

101  
~~102 City utilities shall have the right, privilege and authority to trim trees, overhanging~~  
~~103 branches, hedges, shrubs or other obstructions which might endanger the safety or~~  
~~104 interfere with the construction, operation and maintenance of any electric facilities devices~~  
~~105 or apparatus of city utilities as set forth in city utilities operating procedures, the National~~  
~~106 Electrical Safety Code or as may be regulated by the North American Electric Reliability~~  
~~107 Council. By acceptance of electric service from city utilities, each electric customer shall~~  
~~108 be deemed conclusively to have granted such right, privilege and authority to city utilities;~~  
~~109 and if any electric customer thereafter should challenge or object to exercise of such~~  
~~110 service such customer may be refused and/or discontinued for that reason alone.~~

111  
112 **SECTION 2:** The City Attorney, when codifying the provisions of this Ordinance, is  
113 authorized to provide for different section numbers, subsection numbers, and different  
114 internal citation references than those provided herein when such section numbers,  
115 subsection numbers, or internal citation references are in error or are contrary to the intent  
116 of this Ordinance.

117  
118 **SECTION 3:** Savings Clause. Nothing in this Ordinance shall be construed to  
119 affect any suit or proceeding now pending in any court or any rights acquired, or liability  
120 incurred nor any cause or causes of action occurred or existing, under any act or  
121 ordinance repealed hereby.

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123 **SECTION 4:** Severability Clause. If any section, subsection, sentence, clause, or  
124 phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect  
125 the validity of the remaining portions of this Ordinance. The Council hereby declares that  
126 it would have adopted the Ordinance and each section, subsection, sentence, clause, or  
127 phrase thereof, irrespective of the fact that any one or more sections, subsections,  
128 sentences, clauses, or phrases be declared invalid.

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130 **SECTION 5:** This Ordinance shall be in full force and effect from and after its final  
131 passage by the City Council and after its approval by the Mayor, subject to the provisions  
132 of section 3.11(g) of the City Charter.

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135 **ADOPTED BY THE COUNCIL THIS 27<sup>th</sup> DAY OF February 2023.**

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COUNCIL BILL NO. 2023-06

ORDINANCE NO. \_\_\_\_\_

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ATTEST:

\_\_\_\_\_  
PRESIDING OFFICER

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

**APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2023.**

ATTEST:

\_\_\_\_\_  
MAYOR

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

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY