

AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AMENDING CHAPTER 2 OF THE NIXA CITY CODE BY MODIFYING SECTION 2-80 AND ADDING A NEW ARTICLE TO ESTABLISH PROCEDURES RELATED TO THE SUNSHINE LAW.

Background:

Chapter 610 of the Revised Statutes of Missouri contains provisions which are commonly referenced as the Sunshine Law. The Sunshine Law requires that certain meetings and records of local governments be open to the public.

The Sunshine Law mandates that the City comply with requests submitted by the public for access and copies of City records. There are certain limitations and requirements on how the City is to fill records requests.

Analysis:

Council Bill 2023-22, if approved, would provide local authority for the City's process of filling open records requests. These provisions would provide positive authority, instead of implied authority, for the City's current open records process. This would put the City's open records process on a firmer legal foundation in the event of a challenge.

The provisions of the Sunshine Law provide the general process in which open record requests are to be managed. The provisions of Council Bill 2023-22 would provide the details, within the framework of the Sunshine Law, regarding the City's open records process. Additionally, the provisions of the Council Bill will function as the City's "reasonable written policy." Cities are required to adopt a "reasonable written policy" to detail how the city manages open records requests.

How does this Council Bill accomplish the foregoing?

First, the Bill modifies an existing Code provision (Section 2-80). The amendment to this Section clarifies that the City Clerk is responsible for maintaining the City's records and formalizes the City's current records destruction process. This is more of a housekeeping item.

Next, the Bill adds a new Article to Chapter 2 of the City Code. This new Article will provide the authorization and parameters of the City's open records process.

Article V will provide the provisions which make up the City's Open Records Policy going forward. This Article provides direction on how records requests are to be made, how the City responds to records requests, provides authorization to collect fees for filling records requests, and provides content on which records are deemed closed and provides penalties for those who discuss or provide closed records.

Recommendation:

Staff recommends approval of this Bill. Staff's support is based on the desire to provide a clear set of rules, for staff and the public, regarding how the City will process open records requests. Codifying these provisions ensures the City is transparent with this process.

MEMO SUBMITTED BY:

Nick Woodman | City Attorney

1 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AMENDING CHAPTER 2
2 OF THE NIXA CITY CODE BY MODIFYING SECTION 2-80 AND ADDING A NEW
3 ARTICLE TO ESTABLISH PROCEDURES RELATED TO THE SUNSHINE LAW.
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6 WHEREAS the City Council desires that the City conducts its business in a public
7 manner and within the confines of the law; and
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9 WHEREAS Council further desires that the records of the City be maintained in
10 the manner proscribed by the Missouri Secretary of State’s records retention schedules;
11 and
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13 WHEREAS section 610.028 RSMo. provides that each public governmental body
14 shall provide a reasonable written policy, available for public inspection, which details how
15 the public governmental body is to release or provide access to public records; and
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17 WHEREAS section 610.028 RSMo. also provides that any member or employee
18 of the public governmental body who complies with said policy is not guilty of a violation
19 of the provisions of section 610.010 to section 610.030 or subject to civil liability for any
20 action arising out of their adherence to said policy; and
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22 WHEREAS the City Council desires to adopt the provisions contained herein to
23 establish provisions related to the release and retention of City records.
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25 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
26 NIXA, AS FOLLOWS, THAT:
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28 SECTION 1: Chapter 2, Article III, Division 2, Section 2-80 of the Nixa City Code
29 is hereby amended by repealing said Section in its entirety and adopting in lieu thereof a
30 new section, which said section shall read as follows:
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32 (Note: Language to be added is indicated by being underlined. Language to be removed
33 is indicated by being ~~stricken~~.)
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35 Sec. 2-80. Care of official papers; administer oaths.
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37 The city clerk shall safely and properly keep all records, papers, other documents,
38 and files belonging to the city, which may be entrusted to their his care, ~~and shall not~~
39 ~~permit the same to be removed from his office except upon the written order of the mayor.~~
40 The city clerk shall maintain the records, papers, other documents, and files belonging to
41 the city in conformance with the Missouri secretary of State’s records retention schedules.
42 The city clerk shall annually provide to City Council a list of records that have met retention
43 and the Council may authorize the destruction of such records by resolution. ~~He~~ The city
44 clerk shall be general accountant of the city, administer all official oaths, and all oaths to
45 ~~persons certifying to demands or claims against the city.~~
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47 **SECTION 2:** Chapter 2 of the Nixa City Code is hereby amended by adding thereto
48 a new Article, Article V, which said Article shall read as follows:

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50 (Note: Language to be added is indicated by being underlined. Language to be removed
51 is indicated by being ~~stricken~~.)

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53 Article V. – Open Records Policy

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55 Sec. 2-160. – Purpose.

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57 It is the stated intent of the City Council, that the City of Nixa shall comply with the
58 provisions of Chapter 610 RSMo et seq., commonly referred to as the Missouri Sunshine
59 Law, and the provisions of this Article. This Article is intended to provide the process in
60 which open records may be requested and provided. Additionally, the Council intends
61 that this Article shall function and be deemed as the City’s “reasonable written policy” for
62 purposes of § 610.028 RSMo. This Article shall be interpreted in light of, and subject to,
63 the provisions of Chapter 610 RSMo.

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65 Sec. 2-161. – Custodian of records designated.

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67 (a) The city clerk is hereby designated as the “custodian of records” for the City of Nixa.
68 Requests for copies of, or access to, City records shall be made to the custodian of
69 records. Requests made to other persons shall not be considered to be requests
70 made pursuant to Chapter 610 RSMo. Any official or employee of the City who
71 receives a request for records is hereby directed to inform the custodian of records
72 of the request as soon as reasonably possible. The city clerk is authorized to
73 delegate their functions under this Article.

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75 (b) Notwithstanding Section 2-161(a), the chief of police is hereby designated as the
76 “custodian of records” for those records embraced in Section 610.100 RSMo.
77 Request for copies of, or access to, said records, shall be made to the chief of police.
78 Requests made to other persons for such records shall not be considered to be
79 requests made pursuant to Chapter 610 RSMo. Any official or employee of the City
80 who receives a request for such records is hereby directed to inform the chief of
81 police of the request as soon as reasonably possible. The chief of police is
82 authorized to delegate their functions under this Article.

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84 Sec. 2-162. – Records requests – how made.

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86 (a) All requests for City records shall be in writing and on forms approved and provided
87 by the custodian of records.

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89 (b) Oral requests, if received by the custodian of records, shall be immediately recorded
90 in written form to document the request.

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92 (c) Request for records shall include sufficient information regarding the records
93 requested such that the custodian of records can reasonably identify what records
94 are sought by the requestor.

96 (d) The custodian of records is authorized to request or require any additional
97 information which is reasonably necessary to complete any records requests.

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99 Sec. 2-163. – Response to records requests.

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101 (a) The custodian of records shall respond to all requests for records within three
102 business days of receipt of a complete request. This section shall not be construed
103 as requiring the custodian of records to provide the requested records within three
104 days of the request.

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106 (b) The custodian of records shall document all responses or communications to the
107 requestor and shall document what records were provided.

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109 Sec. 2-164. – Fees for records requests.

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111 (a) Fees for providing records shall be charged as set forth in Section 610.026 RSMo.

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113 (b) The custodian of records is authorized to require a deposit be provided for any
114 records request which, in the reasonable judgment of the custodian of records, will
115 take more than 1 hour to research and compile. Said deposit shall be in the same
116 amount as the estimated cost to fulfil and provide the requested records. Such
117 deposit shall be provided before the City begins researching the request. The
118 deposit authorized by this subsection shall be returned to the requestor, minus any
119 fees authorized by this Section.

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121 (c) Based on the scope and complexity of the request, the City shall produce copies of
122 records using employees of the City that result in the lowest charge for search,
123 research, and duplication time.

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125 (d) Before researching or producing copies of the requested records, the custodian of
126 records shall provide an estimate of the cost to the requestor for providing the
127 requested records.

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129 (e) No fees shall be charged if the total amount of all fees charged for the request are
130 less than \$10.00.

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132 Sec. 2-165. – Inspection of records.

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134 To reduce the cost to both the requesting party and the City, the custodian of records may
135 permit a physical inspection of records by the requesting party.

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137 Sec. 2-166. – Closed records and votes.

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All records, meetings, and votes of the City which are permitted to be closed pursuant to Chapter 610 RSMo, or by any other Federal or State law, shall be maintained as closed records. No such closed record shall be released to any person who is not a part of the City government, except that City’s contractors may be provided access to such records as are reasonably necessary to provide their respective services to the City.

Sec. 2-167. – Penalty for unauthorized disclosure of closed records.

Any person employed or working for the City, or any City official, whether elected or appointed, who has been entrusted with a record that is closed, or who has been a participant in a closed meeting who nonetheless knowingly discloses any closed record or information about the contents of any closed meeting to any person shall be guilty of an offense under the ordinances of the City, and upon conviction therefor, may be punished as provided in Section 1-9 of the City Code. Any such person who is employed or working for the City may also be subject to termination of their employment or discipline as a result of such disclosure. Members of the City Council, or the Mayor may be subject to censure or removal from office as a result of such disclosure.

SECTION 3: The City Attorney, when codifying this Ordinance, is authorized to provide for different section numbers, subsection numbers, and different internal citation references than those provided herein when such section numbers, subsection numbers, or internal citation references are in error or are contrary to the intent of this Ordinance.

SECTION 4: Savings Clause. Nothing in this Ordinance shall be construed to affect any suit or proceeding now pending in any court or any rights acquired, or liability incurred nor any cause or causes of action occurred or existing, under any act or ordinance repealed or modified hereby.

SECTION 5: Severability Clause. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clause, or phrases be declared invalid.

SECTION 6: 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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184 **ADOPTED BY THE COUNCIL THIS ____ DAY OF _____, 2023.**

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ATTEST:

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PRESIDING OFFICER

CITY CLERK

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192 **APPROVED BY THE MAYOR THIS _____ DAY OF _____, 2023.**

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ATTEST:

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MAYOR

CITY CLERK

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199 APPROVED AS TO FORM:

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CITY ATTORNEY

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