

RE: AMENDING CITY CODE TO ALLOW FOR THE EXTENSION OF WATER AND SEWER UTILITY SERVICE OUTSIDE CITY LIMITS

Background:

Since the acquisition of two neighboring water systems and a small sewer system outside the city, certain property owners and developers wish to obtain one or more of our services for new developments. Except for those customers already receiving service from the newly acquired systems, the current city code has no mechanism that allows for new utility service extensions outside the city. The attached Council Bill 2023-00 modifies the city code allowing for such action.

Analysis:

Chapter 22, Article 1, Section 22-1 is the code section that addresses utility services outside the city limits. It has recently been modified to authorize service to the existing customers already connected to the new systems. It does not allow for or address how we are to expand service extensions beyond those already being served.

Staff has been approached by one or more entities wishing to receive water and in one case, sewer service for new commercial development in the area of the RDE/Tuscany Hills service territories that we wish to accommodate. By doing so we will be able to better serve the area in an orderly way, enhance any existing service and improve circulation, pressures, and fire protection in the area.

The only other option for these new developments is to drill more wells and continue the use of septic or waste holding tanks. Staff believes this is ultimately detrimental to the area. Not only is drilling and maintaining additional wells more costly for the individual landowners, more private wells increase the possibility of contamination of the supply source. More private wells also create confusion or difficulty with tracking how the different properties are served in future operations. By allowing for new service extension(s) on our system, we are better able to protect the supply and provide uniform development which ultimately helps keep costs down for everyone. Finally, in some cases, DNR or the County may not issue permits for new wells to be drilled and our systems are the only other option.

Similarly, the use of holding tanks or septic systems can be more costly over time for the property owners because of continual pumping and ongoing maintenance cost. Though we do not own all of the sewer collection systems in the area, we do have enough that is strategically placed so some growth can be anticipated.

Changes contained in this council bill provides staff the needed authorization to uniformly plan water and sewer system growth outside the city which will not only be used in the area of the new systems but other extensions as well such as areas south

and west of the city where planning is already underway for infrastructure growth. Construction standards for the outlying areas will be handled just as they are in town. We already have material and construction standards in place for any extensions, so no modification of those codes are necessary.

The proposed changes allowing for any new extensions can be found on lines 75 through 103 of the attached council bill draft. In this section, the extension of water and/or sewer service may be granted upon the city's receipt of a consent to future annexation. Other requirements for any new extension are included in the previously adopted code such as design and construction plan approval by staff as well as construction inspections just as they are for new additions in town.

This proposed change is somewhat different than previous changes where existing customers of the newly purchased systems were accepted and offered an option to receive the inside city rate upon the execution of a consent to annex. That option remains for those customers but not for any new extensions being considered in this proposal.

Recommendation:

Staff intends to bring this Council Bill back for a second reading along with a recommendation for adoption at your August 14th council meeting. Until then, I am available to answer any questions or address any concerns you may have.

MEMO SUBMITTED BY:

Doug Colvin | Assistant City Administrator, Director Nixa Utilities and Public Works
dcolvin@nixa.com | 417-725-2353

1 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AMENDING CHAPTER
2 22, ARTICLE 1, SECTION 22-1 OF THE NIXA CITY CODE FOR THE PURPOSE OF
3 ESTABLISHING A METHOD TO ALLOW CERTAIN UTILITY CONNECTIONS
4 OUTSIDE THE CITY LIMITS.

5 _____
6
7 WHEREAS the City operates a municipal utility; and

8
9 WHEREAS the City primarily provides utility service to property lying within the
10 City limits; and

11
12 WHEREAS to facilitate the controlled development of property outside the City
13 limits, the City Council desires to modify Section 22-1 to authorize the City Administrator
14 to allow certain utility connections outside the City limits.

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

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19 SECTION 1: Chapter 22, Article I, Section 22-1 of the Nixa City Code is hereby
20 amended by repealing said Section in its entirety and adopting in lieu thereof a new
21 Section 22-1, which said Section shall read as follows:

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

25
26 Sec. 22-1. Municipal utility service area—Generally; Water and sewer service provided
27 outside city limits—When; exemption for certain utility fees upon application.

28
29 (a) *Area of service — City limits.* The city shall operate and furnish city owned municipal
30 utility services within the corporate limits of the city. Nothing herein shall be construed
31 as preventing the city from purchasing, leasing, erecting, installing, or otherwise
32 acquiring real and personal property necessary, useful, or desirable to conduct its
33 municipal utility operations at any location, whether within or outside the corporate
34 limits of the city.

35
36 (b) *Provision of water and sewer service outside the city limits — Exemption for certain*
37 *acquired systems.* The city may furnish municipal water and sewer service to users
38 located outside the corporate limits of the city provided that such users were provided
39 such utility services by either Rex Deffenderfer Enterprises, Inc., CTW Waterworks
40 Regional Not for Profit Water Company, Inc., or Tuscany Hills Regional Sewer District,
41 Inc. on the day of acquisition of these systems by the city.

42
43 (c) *Water and sewer fees — Exemption to increased rate for service outside city limits for*
44 *certain users.* Where the city charges an increased rate for the provision of water or
45 sewer service to properties lying outside the city limits, those properties lying within

46 the areas described in section 22-1 (b) may be granted an exemption to the increased
47 rate pursuant to the following:

48
49 (1) The fee owners of the property file an application with the city requesting an
50 exemption from the outside city limit water or sewer service rate.

51
52 (2) The fee owners execute an irrevocable petition and consent to annex ("petition")
53 requesting voluntary annexation into the city. Such petition shall be a covenant
54 running with the land and shall be binding on the fee owners, their successors, and
55 assigns. Said petition shall include a provision that, the city council may, by
56 resolution, invoke the provisions of the petition and cause the property to be
57 annexed into the city provided that such annexation is in compliance with state law.
58 The form of the petition and other supporting documents the city attorney deems
59 necessary shall be reviewed and approved by the city attorney prior to its
60 acceptance by the city.

61
62 (3) The petition is recorded among the appropriate land records of the county in which
63 the subject property is located.

64
65 (4) If at any point the petition is found invalid or is construed as not running with the
66 land, then the property shall no longer be exempt from the outside the city limit
67 water or sewer rate. It is expressly stated as the intent of the city council that the
68 exemption from the outside the city limit rate is subject to the validity of said petition
69 and covenant.

70
71 (5) The city administrator shall administer the provisions of this section and is
72 authorized to establish additional rules and procedures regarding the
73 administration of this subsection ~~section~~.

74
75 (d) City administrator authorized to allow water connections outside the city limits. The
76 city administrator may authorize the provision of municipal water service to property
77 located outside the city limits where such service is available, provided that the fee
78 owner of the property executes an irrevocable petition and consent to annex
79 ("petition") requesting voluntary annexation into the city. Such petition shall be a
80 covenant running with the land and shall be binding on the fee owners, their
81 successors, and assigns. Said petition shall include a provision that, the city council
82 may, by resolution, invoke the provisions of the petition and cause the property to be
83 annexed into the city provided that such annexation is in compliance with state law.
84 The form of the petition, and other supporting documents the city attorney deems
85 necessary, shall be reviewed and approved by the city attorney prior to its acceptance
86 by the city. The petition shall be recorded among the appropriate land records of the
87 county in which the subject property is located. The city administrator is authorized to
88 do all things necessary or convenient to carry out the terms of this subsection.

89
90 (e) City administrator authorized to allow sewer connections outside the city limits. The
91 city administrator may authorize the provision of municipal sewer service to property

92 located outside the city limits where such service is available, provided that the fee
93 owner of the property executes an irrevocable petition and consent to annex
94 ("petition") requesting voluntary annexation into the city. Such petition shall be a
95 covenant running with the land and shall be binding on the fee owners, their
96 successors, and assigns. Said petition shall include a provision that, the city council
97 may, by resolution, invoke the provisions of the petition and cause the property to be
98 annexed into the city provided that such annexation is in compliance with state law.
99 The form of the petition, and other supporting documents the city attorney deems
100 necessary, shall be reviewed and approved by the city attorney prior to its acceptance
101 by the city. The petition shall be recorded among the appropriate land records of the
102 county in which the subject property is located. The city administrator is authorized to
103 do all things necessary or convenient to carry out the terms of this subsection.
104

105 **SECTION 2:** The City Attorney, when codifying this Ordinance, is authorized to
106 provide for different section numbers, subsection numbers, and different internal citation
107 references than those provided herein when such section numbers, subsection numbers,
108 or internal citation references are in error or are contrary to the intent of this Ordinance.
109

110 **SECTION 3:** Savings Clause. Nothing in this Ordinance shall be construed to
111 affect any suit or proceeding now pending in any court or any rights acquired, or liability
112 incurred nor any cause or causes of action occurred or existing, under any act or
113 ordinance repealed or modified hereby.
114

115 **SECTION 4:** Severability Clause. If any section, subsection, sentence, clause, or
116 phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect
117 the validity of the remaining portions of this Ordinance. The Council hereby declares that
118 it would have adopted the Ordinance and each section, subsection, sentence, clause, or
119 phrase thereof, irrespective of the fact that any one or more sections, subsections,
120 sentences, clauses, or phrases be declared invalid.
121

122 **SECTION 5:** This Ordinance shall be in full force and effect from and after its final
123 passage by the City Council and after its approval by the Mayor, subject to the provisions
124 of section 3.11(g) of the City Charter.
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126
127 **[Remainder of page intentionally left blank. Signatures follow on next page.]**
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138 **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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146 **APPROVED BY THE MAYOR THIS ___ DAY OF _____, 2023.**

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ATTEST:

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150

MAYOR

CITY CLERK

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153

154 APPROVED AS TO FORM:

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156

CITY ATTORNEY

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