

Memorandum Regarding Council Bill No. 2023-46: An Ordinance amending the 2023 annual budget to appropriate funds for engineering services related to the acquisition of a certain drainage easement; and declaring an emergency pursuant to Section 3.11(f) of the City Charter.

Background:

The City of Nixa is currently involved in litigation regarding the validity of a drainage easement (See Case No. 22CT-CC00166). The City Council has been previously advised on the nature of the claims but by way of reminder, the Plaintiff in this case is seeking to have a public drainage easement declared void.

The easement in question is a critical part of the infrastructure of a public street maintained by both the City and the Ozark Special Road District.

Analysis:

The City has attempted to negotiate with the Plaintiff to have the easement voluntarily provided to the City. The Plaintiff has rejected offers made by the City to purchase the easement. These offers were based on the appraised value of the easement.

City staff are in the process of engaging the City's contract civil engineers (Olsson & Associates) to provide the necessary easement documents and testimony to prepare for the potential condemnation of the easement.

City staff do not have an appropriation in the current budget to engage Olsson & Associates for this work.

City staff request that this Council Bill be approved as an emergency ordinance pursuant to Section 3.11(f) of the City Charter. Therefore, staff recommends that this Bill be approved as an emergency ordinance. The reasons for the emergency declaration are as follows: (1) the appropriation contemplated herein relates to the defense of ongoing litigation and the preservation of a public street; (2) the engineering services contemplated by this appropriation are a necessary component in the process of the City acquiring the easement through the condemnation process; (3) the easement in question is a critical piece of public infrastructure that, if removed, would make a public street more likely to fail and result in enhanced maintenance responsibilities; and (4) delaying the acquisition of this easement and the provision of the contemplated engineering services creates more risk of liability for the City.

Recommendation:

Staff recommends approval of this Bill and the declaration of emergency contained therein.

MEMO SUBMITTED BY:

Nick Woodman | City Attorney

Attachments:

Council Bill No. 2023-46;

Council Bill Exhibit A – Budget Amendment Document.

1 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AMENDING THE 2023
2 ANNUAL BUDGET TO APPROPRIATE FUNDS FOR ENGINEERING SERVICES
3 RELATED TO THE ACQUISITION OF A CERTAIN DRAINAGE EASEMENT; AND
4 DECLARING AN EMERGENCY PURSUANT TO SECTION 3.11(F) OF THE CITY
5 CHARTER.
6

7
8 WHEREAS Section 67.040 RSMo. provides that after a budget has been approved
9 no increase in the revenues or expenditures from any fund shall be made unless the
10 governing body adopts a measure setting forth the facts and reasons making the increase
11 necessary and authorizing the increase; and
12

13 WHEREAS Section 8.7 of the City Charter authorizes the City Council to amend
14 budgeted revenues and expenditures upon the request of the City Administrator; and
15

16 WHEREAS the City Administrator has requested a budget amendment as
17 reflected in "Council Bill Exhibit A" and for the purposes referenced therein; and
18

19 WHEREAS City Charter Section 3.11(f) authorizes the City Council to adopt an
20 ordinance on the day of its introduction if it contains a declaration describing in clear and
21 specific terms the facts and reasons constituting the emergency; and
22

23 WHEREAS the Council finds and declares that the adoption of this Ordinance
24 constitutes an emergency for the reasons set forth herein; and
25

26 WHEREAS the City Council desires to amend the City's 2023 budget for the
27 purposes identified herein.
28

29 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
30 NIXA, AS FOLLOWS, THAT:
31

32 SECTION 1: The City of Nixa's 2023 Annual Budget is hereby amended in the
33 accounts and the amounts as shown on "Council Bill Exhibit A," which is attached hereto
34 and incorporated herein by this reference.
35

36 SECTION 2: City Council finds that the budget amendment enacted by this
37 Ordinance has been recommended by the City Administrator. The City Administrator is
38 directed to cause the appropriate accounting entries to be made in the books and records
39 of the City to reflect the budget amendment enacted by this Ordinance.
40

41 SECTION 3: The City Council finds and declares that the adoption of this
42 Ordinance constitutes an emergency pursuant to Section 3.11(f) of the City Charter. The
43 reasons for the emergency declaration are as follows: (1) the appropriation contemplated
44 herein relates to the defense of ongoing litigation and the preservation of a public street;
45 (2) the engineering services contemplated by this appropriation are a necessary
46 component in the process of the City acquiring the easement through the condemnation

47 process; (3) the easement in question is a critical piece of public infrastructure that, if
48 removed, would make a public street more likely to fail and result in enhanced
49 maintenance responsibilities; and (4) delaying the acquisition of this easement and the
50 provision of the contemplated engineering services creates more risk of liability for the
51 City.

52
53 **SECTION 4:** This Ordinance shall be in full force and effect from and after its final
54 passage by the City Council and after its approval by the Mayor, subject to the provisions
55 of section 3.11(g) of the City Charter.

56

57

58 **ADOPTED BY THE COUNCIL THIS 23rd DAY OF October, 2023.**

59

60 ATTEST:

61

62 _____

63 PRESIDING OFFICER

63 CITY CLERK

64

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

66

67 ATTEST:

68

69 _____

70 MAYOR

69 CITY CLERK

71

72 APPROVED AS TO FORM:

73

74 _____

75 CITY ATTORNEY

City of Nixa, MO
Budget Amendment

<u>Budget Amendment Amount</u>	<u>Fund</u>	<u>G/L Description</u>	<u>G/L Line #</u>	<u>Revenue Source</u>
\$10,000	11 - General	Professional Fees	11-600-5160000	Current Revenues

Explanation: To amend the current budget of the City of Nixa to appropriate funds for engineering costs associated with acquiring a drainage easement.

This proposed Budget Amendment has been approved and requested by the City Administrator, pursuant to City Charter section 8.7.

Jimmy Liles, City Administrator

Authorized by Passage of Ordinance No. _____

Date of Passage: _____

Total Budget Amendments by Department Year to Date:

Electric	
Water	\$26,100
Wastewater	\$275,000
ARPA	\$375,787
Admin	\$7,100
Legal	
Economic Development	
Police	\$90,041
Street	\$880,240
Park	\$647,689
Planning & Development	
TOTAL	<u>\$2,301,957</u>