

## **Memorandum Regarding Council Bill No. 2024-20: An Ordinance Amending Section 1-9 of the Nixa City Code.**

### **Background:**

It is best practice for codified legislation, such as the City's municipal code of ordinances, to contain a general penalty clause. A general penalty clause provides a penalty for violations of municipal codes where a separate specific penalty is not provided. For an ordinance to be enforceable it must have a penalty associated with its provisions.

The City of Nixa's general penalty clause is in Section 1-9 of the Nixa City Code.

### **Analysis:**

Section 1-9 of the Nixa City Code currently contains a clause that incorporates by reference any state law penalties where a city code section prohibits the same actions as a state statute. This creates issues when prosecuting city ordinance violations as it is unclear what the actual penalty to be assessed for a violation is. The draft of Council Bill No. 2024-20, if approved would remove the clause incorporating state penalties by reference, remove duplicative language regarding the ongoing nature of violations, and provide additional language clean-up.

### **Recommendation:**

It is my recommendation that Section 1-9 be amended to remove the state law penalty reference.

MEMO SUBMITTED BY:

**Nick Woodman** | City Attorney

### **Attachments:**

Council Bill No. 2024-20.

1 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AMENDING CHAPTER 1,  
2 SECTION 1-9 OF THE NIXA CITY CODE FOR THE PURPOSE OF MODIFYING THE  
3 CITY’S GENERAL PENALTY PROVISIONS.  
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5  
6 **WHEREAS** it is common practice for codes of ordinances to contain a general  
7 penalty provision; and  
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9 **WHEREAS** a general penalty provision ensures that ordinance violations are  
10 enforceable; and  
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12 **WHEREAS** the City of Nixa currently has a general penalty provision located at  
13 Section 1-9 of the Nixa City Code; and  
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15 **WHEREAS** City staff are requesting amendments to the City’s current general  
16 penalty provision, located at Section 1-9; and  
17

18 **WHEREAS** specifically staff are requesting the removal of 1-9(d) which  
19 incorporates by reference State law penalties for municipal ordinance violations; and  
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21 **WHEREAS** this creates confusion when attempting to determine what the penalty  
22 is for a violation of the Nixa City Code; and  
23

24 **WHEREAS** the City Council desires to modify the City Code as set forth herein.  
25

26 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**  
27 **NIXA, AS FOLLOWS, THAT:**  
28

29 **SECTION 1:** Chapter 1, Section 1-9 of the Nixa City Code is hereby amended by  
30 repealing said Section in its entirety and adopting in lieu thereof a new Section 1-9, which  
31 said Section shall read as follows (Explanation: Language in bold-face type (e.g., **thus**)  
32 is language to be to be added. Language in bold-faced brackets (e.g., **[thus]**) is not  
33 enacted and is intended to be omitted or deleted.):  
34

35 Sec. 1-9. – ~~[General penalty]~~ **General penalty provision for code and ordinance**  
36 **violations** ~~[-continuing violations].~~  
37

38 (a) In this section, the term "violation of this Code" means:  
39

- 40 (1) Doing **any** ~~[an]~~ act that is prohibited or **is** made or declared unlawful, an offense,  
41 **a crime, [or]** a misdemeanor, **an infraction, or an ordinance violation** by **this**  
42 **code or any ordinance of the city** or by **any** rule or regulation **which is**  
43 **promulgated pursuant to this Code or any ordinance of the city** ~~[authorized~~  
44 ~~by ordinance];~~  
45

46 (2) Failure to perform **any [an]** act that is required to be performed by **this code or**  
47 **any ordinance of the city** or by **any** rule or regulation **which is promulgated**  
48 **pursuant to this Code or any ordinance of the city** [~~authorized by ordinance~~];  
49 or

50  
51 ~~[(3) Failure to perform an act if the failure is declared a misdemeanor or an offense or~~  
52 ~~unlawful by ordinance or by rule or regulation authorized by ordinance.]~~

53  
54 (b) In this section, the term "violation of this Code" does not include the failure of a city  
55 officer or city employee to perform an official duty, unless it is provided that failure to  
56 perform the duty is to be punished as provided in this section or it is clear from the  
57 context that it is the intent to impose the penalty provided for in this section upon the  
58 officer or employee.

59  
60 (c) Except as otherwise provided **in this code, or by law a person convicted of a**  
61 **violation of this Code shall be punished by a fine not exceeding \$1,000.00. [:]**

62  
63 ~~[(1) A person convicted of a violation of this Code shall be punished by a fine not~~  
64 ~~exceeding \$1,000.00, or any combination thereof.]~~

65  
66 ~~[(2) With respect to violations of this Code that are continuous with respect to time,~~  
67 ~~each day the violation continues is a separate offense.]~~

68  
69 ~~[(3) With respect to violations of this Code that are not continuous with respect to time,~~  
70 ~~each day the violation continues is a separate offense.]~~

71  
72 ~~[(4) The imposition of a penalty does not prevent revocation or suspension of a~~  
73 ~~license, permit or franchise, or other administrative sanctions.]~~

74  
75 ~~[(5) Violations of this Code that are continuous with respect to time are a public~~  
76 ~~nuisance and may be abated by injunctive or other equitable relief and by such~~  
77 ~~other means as are provided by law. The imposition of a penalty does not prevent~~  
78 ~~equitable relief.]~~

79  
80 **(d) Every day any violation of this Code exists shall constitute a separate offense.**

81  
82 ~~[(d) Notwithstanding the provisions of subsection (c) of this section, if a violation of this~~  
83 ~~Code is also a violation of state law, the penalty for such violation shall be the same~~  
84 ~~as provided for such violation of state law, except that imprisonment shall be in the~~  
85 ~~city prison.]~~

86  
87 **(e) The imposition of any penalty by this Code shall not prevent revocation or**  
88 **suspension of a license, permit, franchise, or other administrative sanctions**  
89 **authorized by this Code.**

90

91 ~~[(e) Whenever the city administrator enforces the laws of the city determining that a~~  
92 ~~violation of the state statutes, city Code of Ordinances, resolutions, contractual~~  
93 ~~agreements, and written notification is given to the owner of such violation,~~  
94 ~~delinquency or noncompliance, the owner shall be prohibited from applying for any~~  
95 ~~and all licenses, permits or from entering into any agreement with the city until such~~  
96 ~~time as the owner fully complies with all rules and regulations that the city uses in~~  
97 ~~governing the city.]~~

98  
99 **SECTION 2:** The City Attorney, when codifying the provisions of this Ordinance, is  
100 authorized to provide for different section numbers, subsection numbers, and different  
101 internal citation references than those provided herein when such section numbers,  
102 subsection numbers, or internal citation references are in error or are contrary to the intent  
103 of this Ordinance.

104  
105 **SECTION 3:** Savings Clause. Nothing in this Ordinance shall be construed to  
106 affect any suit or proceeding now pending in any court or any rights acquired, or liability  
107 incurred nor any cause or causes of action occurred or existing, under any act or  
108 ordinance repealed hereby.

109  
110 **SECTION 4:** Severability Clause. If any section, subsection, sentence, clause, or  
111 phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect  
112 the validity of the remaining portions of this Ordinance. The Council hereby declares that  
113 it would have adopted the Ordinance and each section, subsection, sentence, clause, or  
114 phrase thereof, irrespective of the fact that any one or more sections, subsections,  
115 sentences, clauses, or phrases be declared invalid.

116  
117 **SECTION 5:** This Ordinance shall be in full force and effect from and after its final  
118 passage by the City Council and after its approval by the Mayor, subject to the provisions  
119 of section 3.11(g) of the City Charter.

120  
121  
122 **[Remainder of page intentionally left blank. Signatures follow on next page.]**

137 **ADOPTED BY THE COUNCIL THIS 22nd DAY OF July 2024.**

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139

ATTEST:

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

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

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145 **APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2024.**

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ATTEST:

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\_\_\_\_\_  
MAYOR

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

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153 APPROVED AS TO FORM:

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

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