

Memorandum Regarding Council Bill No. 2024-32: An Ordinance.

Background:

Council Bill No. 2024-32 proposes the establishment of a new Chapter 13 in the Nixa City Code. This ordinance aims to consolidate existing provisions related to municipal court operations and broaden the applicability of current administrative warrant provision.

Analysis:

The Council Bill accomplishes two goals. The first is to consolidate and organize existing provisions related to municipal court into one Chapter of the City Code. The second goal is to adopt broader and more generally applicable provisions for administrative warrants.

Consolidation of Municipal Court Provisions:

The new chapter will consolidate existing municipal court provisions into one location. This includes codifying Ordinance No. 2224 which was the ordinance by which the Council consolidated municipal court operations with the Christian County Circuit Court and moving the City's existing

Administrative Warrants:

Additionally, the new chapter will house the City's expanded provisions related to administrative warrants. Administrative warrants are necessary for enforcing municipal regulations while upholding constitutional protections under the Fourth Amendment of the U.S. Constitution, which guards against unreasonable searches and seizures. By requiring a judicial warrant, the ordinance aligns with these constitutional standards, ensuring that enforcement actions are conducted with appropriate oversight.

The ordinance authorizes the municipal judge to issue administrative warrants. These warrants will allow city officials to conduct searches, inspections, and seizures necessary for enforcing city ordinances.

Detailed procedures are established for applying for, issuing, executing, and returning administrative warrants. This includes requirements for probable cause and proper documentation, ensuring that enforcement actions respect constitutional protections.

Recommendation:

Staff recommends adopting Council Bill No. 2024-32. This ordinance will better organize existing provisions related to municipal court, provide clear procedures for administrative enforcement, and ensure compliance with constitutional standards. The consolidation of provisions and establishment of detailed warrant procedures will facilitate more effective and fair enforcement of city ordinances.

MEMO SUBMITTED BY:

Nick Woodman | City Attorney

Attachments:

Council Bill No. 2024-32.

1 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA ESTABLISHING
2 CHAPTER 13 OF THE NIXA CITY CODE; REPEALING SECTION 1-10 OF THE NIXA
3 CITY CODE; AND REPEALING SECTION 14-30 OF THE NIXA CITY CODE; FOR THE
4 PURPOSE OF MODIFYING AND CONSOLIDATING CITY CODE AND ORDINANCE
5 PROVISIONS RELATED TO MUNICIPAL COURT INCLUDING PROVISIONS
6 RELATED TO THE ISSUANCE OF ADMINISTRATIVE WARRANTS.

7
8 WHEREAS the City enforces its code of ordinances via prosecution through the
9 municipal court or, for certain offenses, via an administrative enforcement process (e.g.
10 the City’s vegetation abatement procedures); and

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12 WHEREAS the City of Nixa has adopted codes and ordinances regulating public
13 health, safety, and welfare; and

14
15 WHEREAS to aid in the enforcement of the City’s administrative codes, City staff
16 are proposing modifications to the City Code to authorize the issuance of administrative
17 warrants by the municipal judge; and

18
19 WHEREAS the intent is to broaden the applicability of the City’s authorization to
20 seek administrative warrants and to model the requirements of obtaining and executing
21 a warrant to those of state statutes; and

22
23 WHEREAS at the same time, City staff wish to consolidate the codes and
24 ordinances relating to the operation of the municipal court into one Chapter of the City
25 Code, this will make it less difficult for staff and the public to locate the City’s adopted
26 ordinances related to the municipal court; and

27
28 WHEREAS to that end, City staff are proposing the amendments contained within
29 this Council Bill; and

30
31 WHEREAS the intent of this Council Bill is to codify Ordinance No. 2224 (the court
32 consolidation ordinance) and the City’s court cost ordinance (currently codified at Section
33 1-10) into a new Division 1 within a new Chapter 13; and

34
35 WHEREAS further, a Division 2 will be included in Chapter 13 which will contain
36 the City’s new administrative warrant provisions; and

37
38 WHEREAS the City Council desires to adopt the amendments contained herein.

39
40 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
41 NIXA, AS FOLLOWS, THAT:

42
43 SECTION 1: The Nixa City Code is hereby amended by adding thereto a new
44 Chapter, which shall read as follows (Explanation: Language in bold-face type (e.g., **thus**)
45 is language to be added. Language in bold-faced brackets (e.g., **[thus]**) is not
46 enacted and is intended to be omitted or deleted.):

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Chapter 13 – Municipal Court.

Article I – General Provisions.

Sec. 13-1. Violations of municipal ordinance to be heard and determined by Associate Circuit Judges of Christian County.

- (a) Pursuant to Article V, Sections 23 and 27 of the Missouri Constitution and Section 479.040 RSMo., the City Council hereby elects to have municipal ordinance violations heard and determined by an Associate Circuit Judge of the Christian Count Circuit Court, effectively transferring the Municipal court to the Christian County Circuit Court, also known as the 38th Judicial Circuit.**
- (b) The transfer of the municipal court to the 38th Judicial Circuit shall be effective January 1, 2022.**
- (c) The City Administrator is hereby authorized and directed to take additional actions as may be necessary to carry out the intent and purpose of this Ordinance, including providing copies of this Ordinance to the Presiding Judge of the 38th Judicial Circuit, and to the Office of State Court Administrator, and to work with such officials to effectuate the transfer of court operations contemplated by this Ordinance.**
- (d) The provisions of this Section were effective on September 16, 2021, via the adoption and approval of Ordinance No. 2224.**

Sec. 13-2. Court costs.

In addition to any fine which may be imposed by a Judge in any case regarding a Nixa ordinance violation filed in the 38th Judicial Circuit, and in addition to any other fees authorized or required by law, there shall be assessed as costs the following:

- (a) Costs of court in the amount of \$15.00 are hereby established and assessed for each such Court proceeding, in addition to any other court costs as may be required by law.**
- (b) *Police officer training fee.* A fee of \$3.00 is hereby established and assessed as additional court costs in each court proceeding.**
 - (1) Two dollars of each such court cost shall be transmitted monthly to the city and used to pay for police officer training as provided by RSMo 488.5336. The city shall not retain for training purposes more than \$1,500.00 of such funds for each certified law enforcement officer or candidate for certification**

92 employed by the city. Any excess funds shall be transmitted quarterly to the
93 city's general fund.

94
95 (2) One dollar of each such court cost shall be sent to the State Treasury to the
96 credit of the Peace Officers Standards and Training Commission Fund as
97 provided by RSMo 488.5336.

98
99 (c) *Crime Victims' Compensation Fund*. An additional sum of \$7.50 is hereby
100 established and assessed as additional court costs in each court proceeding as
101 authorized by RSMo 595.045.

102
103 (d) An additional sum of \$4.00 is hereby established and assessed as additional
104 court costs in each Court proceeding to provide operating expenses for shelters
105 for battered persons as authorized by RSMo 488.607.

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107 (e) An additional sum of \$2.00 is hereby established and assessed as an additional
108 court cost in each court proceeding to establish the inmate Prisoner Detainee
109 Security Fund as authorized by RSMo 488.5026.

110
111 (f) An additional sum of \$7.00 is hereby established and assessed as additional
112 court costs in each court proceeding as a surcharge for the Statewide Court
113 Automation Fund.

114
115 (g) Any other lawful and reasonable cost as may be assessed by the court as
116 additional costs of court.

117
118 **Article II – Administrative Warrants.**

119
120 **Sec. 13-10. Establishment.**

121
122 The Missouri Supreme Court has recognized the authority of constitutional
123 charter cities to provide for the issuance of administrative warrants (Frech v. City
124 of Columbia, 693 S.W.2d 813 (Mo. 1985)). The City Council of the City of Nixa has
125 determined that such warrants are necessary for the preservation of the public
126 health, safety, and welfare in that such warrants aid the City and its officials in the
127 enforcement of its ordinances and regulations. Therefore, such administrative
128 warrants may be issued under the provisions of this article to assist the City of
129 Nixa with the investigation, administration, and enforcement, to the fullest extent,
130 of the ordinances of the City or any regulations promulgated pursuant thereto.

131
132 **Sec. 13-11. Administrative warrant defined – who may issue – scope of such**
133 **warrant.**

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135 An "administrative warrant" is a written order of the municipal judge, or
136 another Christian County judge if the municipal judge is absent, commanding any
137 or all of the following:

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- (a) The search or inspection of any property, place or thing to determine or prove the existence of violations of any ordinance or regulation of the city;
- (b) The seizure, photographing, copying or recording of property or the physical conditions found thereon or therein to determine or prove the existence of violations of any ordinance or regulation of the city; or
- (c) To enforce the provisions of any ordinance or regulation of the city, including without limitation, compelling the production of documents or the attendance of witnesses at any administrative hearing authorized by any ordinance or regulation of the City.

Sec. 13-12. Who may execute.

Administrative warrants shall be directed to the chief of police or any other police officer, or law enforcement officer having jurisdiction over the property, and shall be executed by authorized city personnel.

Sec. 13-13. Application.

- (a) Any police officer, code enforcement officer, building inspector, or city attorney for the city may apply to the municipal judge for the issuance of an administrative warrant.
- (b) The application shall:
 - (1) Be in writing;
 - (2) State the time and date of the making of the application;
 - (3) Identify the property or places to be entered, searched, inspected, or seized in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;
 - (4) State that an appropriate officer of the city has requested the consent of the owner or occupant of the property or places to be entered, searched, inspected, or seized and such request for consent has been denied;
 - (5) State facts sufficient to show probable cause for the issuance of a warrant, as provided in this Article, to:
 - a. Search or inspect for violations of city ordinance or regulation and provide a specific citation of such city ordinance, or regulation, in the application; or

184 b. Show that entry or seizure is authorized and necessary to enforce a City
185 Code, City ordinance, or regulation and that any required due process
186 has been afforded prior to the entry or seizure;

187
188 (6) Be verified by the oath or affirmation of the applicant;

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190 (7) Be signed by the applicant and filed in the municipal court.

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192 (c) The application may be supplemented by a written affidavit by oath or
193 affirmation. Such affidavit shall be considered in determining whether there is
194 a probable cause for the issuance of a warrant and in filling out any deficiencies
195 in the description of the property or place to be searched or inspected.

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197 **Sec. 13-14. Hearing and procedure.**

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199 (a) The municipal judge shall hold a non-adversary ex parte hearing to determine
200 whether probable cause exists to inspect or search for violations of any city
201 ordinance or regulation or to enforce any city ordinance or regulation.

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203 (b) The municipal judge shall determine whether the action to be taken is
204 reasonable in light of the facts stated. The municipal judge shall consider the
205 goals of the ordinance or regulation sought to be enforced and such other
206 factors as may be appropriate including, but not limited to, the physical
207 condition of the specified property, the age and nature of the property, the
208 condition of the area in which the property is located, the known violation of
209 any relevant ordinance or regulation and the passage of time since the
210 property's last inspection. The standard for issuing a warrant need not be
211 limited to actual knowledge of an existing violation of any city ordinance or
212 regulation.

213
214 (c) If it appears from the application and any supporting affidavit that there is
215 probable cause to inspect or search for violations of any city ordinance or
216 regulation or to enforce any such city ordinance or regulation, a warrant shall
217 immediately be issued.

218
219 (d) The warrant shall be issued in the form of an original and two copies and the
220 application and any supporting affidavits and one copy of the warrant as issued
221 shall be retained in the records of the municipal court.

222
223 **Sec. 13-15. Contents of administrative warrant.**

224
225 (a) The warrant shall:

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227 (1) Be in writing and in the name of the City of Nixa, Missouri;

228

- 229 **(2) Be directed to any police officer, code enforcement officer, or building**
230 **inspector of the city, or any other law enforcement officer having jurisdiction**
231 **over the property;**
- 232
- 233 **(3) State the time and date the warrant was issued;**
- 234
- 235 **(4) Identify the property or places to be searched, inspected or entered upon in**
236 **sufficient detail and particularity that the officer executing the warrant can**
237 **readily ascertain it;**
- 238
- 239 **(5) Command that the described property or places be searched or entered**
240 **upon or seized and that any evidence of any violations found therein or**
241 **thereon, or any abatement performed therein or thereon, or a description of**
242 **any property seized pursuant to an abatement, be returned within ten days**
243 **after filing the application, via a warrant return to the municipal judge who**
244 **issued the warrant, to be dealt with according to law;**
- 245
- 246 **(6) Be signed by the judge with their title of office indicated.**

247

248 **Sec. 13-16. Execution and return.**

249

250 **(a) A warrant issued under this chapter shall be executed only by the chief of**
251 **police, other police officer, code enforcement officer, or building inspector of**
252 **the City or any other law enforcement officer having jurisdiction over the**
253 **property; provided however, that one or more designated city officials may**
254 **accompany the officer and the warrant shall be executed in the following**
255 **manner:**

256

257 **(1) The warrant shall be executed by conducting the search, inspection, entry**
258 **or seizure as commanded and shall be executed as soon as practicable and**
259 **in a reasonable manner.**

260

261 **(2) The officer shall give the owner or occupant of the property searched,**
262 **inspected or entered upon a copy of the warrant.**

263

264 **a. If any property is seized incident to the search, the officer shall give the**
265 **person from whose possession it was taken, if the person is present, an**
266 **itemized receipt for the property taken. If no such person is present, the**
267 **officer shall leave the receipt at the site of the search in a conspicuous**
268 **place.**

269

270 **b. A copy of the itemized receipt of any property taken shall be delivered to**
271 **the city attorney within two working days of the search.**

272

273 c. The disposition of property seized or abated pursuant to a warrant under
274 this section shall be in accordance with an applicable ordinance or Code
275 section, but in the absence of same, then with RSMo 542.301.
276

277 (3) The officer may summon as many persons as deemed necessary to assist in
278 executing the warrant and such persons shall not be held liable because of
279 any illegality of the search and seizure.
280

281 (4) An officer making a search pursuant to an invalid warrant, the invalidity of
282 which is not apparent on its face, may use such force as would be justified
283 if the warrant were valid.
284

285 (5) A warrant shall expire if it is not executed, and the required return made
286 within ten days after the date of the issuance of the warrant.
287

288 (6) After execution of the warrant, the warrant, with a return thereon signed by
289 the officer making the search, shall be delivered to the municipal court.
290

291 (7) The return shall show the date and manner of execution and the name of the
292 possessor and of the owner, when not the same person, if known, of the
293 property and places searched or seized.
294

295 (8) The return shall be accompanied by any photographs, copies or recordings
296 made, a description of any abatements performed, and by any property
297 seized pursuant to an abatement, along with a copy of the itemized receipt
298 of such property required by this section; provided however, that seized
299 property may be disposed of as provided herein and in such a case a
300 description of the property seized shall accompany the return.
301

302 (9) The court clerk, upon request, shall deliver a copy of the return to the
303 possessor and the owner, when not the same person, of the property
304 searched or seized.
305

306 **Sec. 13-17. Warrant invalid – When.**
307

308 (a) A warrant shall be deemed invalid:
309

310 (1) If it was not issued by the municipal judge, or another judge of the Christian
311 County Circuit Court if the municipal judge is unavailable;
312

313 (2) If it was issued without a written application having been filed and verified;
314

315 (3) If it was issued without sufficient probable cause in light of the goals of the
316 ordinance or regulation to be enforced and such other factors as provided
317 in this Article;
318

319 (4) If it does not describe the property or places to be searched, inspected,
320 entered upon or seized with sufficient certainty;

321
322 (5) It if is not signed by the judge who issued it; or

323
324 (6) If it was not executed and the required return made within ten days after the
325 date of the making of the application.

326
327 **SECTION 2:** Chapter 1, Section 1-10 of the Nixa City Code is hereby amended by
328 repealing said Section in its entirety and adopting in lieu thereof a new Section, which
329 shall read as follows (Explanation: Language in bold-face type (e.g., **thus**) is language to
330 be to be added. Language in bold-faced brackets (e.g., **[thus]**) is not enacted and is
331 intended to be omitted or deleted.):

332
333 **Sec. 1-10 (Reserved).**

334
335 ~~[Sec. 1-10. Court costs.]~~

336
337 ~~[In addition to any fine which may be imposed by a Judge in any case regarding a Nixa~~
338 ~~ordinance violation filed in the 38th Circuit Court, and in addition to any other fees~~
339 ~~authorized or required by law, there shall be assessed as costs the following:]~~

340
341 ~~[(a) Costs of court in the amount of \$15.00 are hereby established and assessed for each~~
342 ~~such Court proceeding, in addition to any other court costs as may be required by~~
343 ~~law.]~~

344
345 ~~[(b) Police officer training fee. A fee of \$3.00 is hereby established and assessed as~~
346 ~~additional court costs in each court proceeding.]~~

347
348 ~~[(1) Two dollars of each such court cost shall be transmitted monthly to the city and~~
349 ~~used to pay for police officer training as provided by RSMo 488.5336. The city shall~~
350 ~~not retain for training purposes more than \$1,500.00 of such funds for each certified~~
351 ~~law enforcement officer or candidate for certification employed by the city. Any excess~~
352 ~~funds shall be transmitted quarterly to the city's general fund.]~~

353
354 ~~[(2) One dollar of each such court cost shall be sent to the State Treasury to the credit~~
355 ~~of the Peace Officers Standards and Training Commission Fund as provided by RSMo~~
356 ~~488.5336.]~~

357
358 ~~[(c) Crime Victims' Compensation Fund. An additional sum of \$7.50 is hereby established~~
359 ~~and assessed as additional court costs in each court proceeding as authorized by~~
360 ~~RSMo 595.045.]~~

361
362 ~~[(d) An additional sum of \$4.00 is hereby established and assessed as additional court~~
363 ~~costs in each Court proceeding to provide operating expenses for shelters for battered~~
364 ~~persons as authorized by RSMo 488.607.]~~

365
366 ~~[(e) An additional sum of \$2.00 is hereby established and assessed as an additional court~~
367 ~~cost in each court proceeding to establish the inmate Prisoner-Detainee Security Fund~~
368 ~~as authorized by RSMo 488.5026.]~~

369
370 ~~[(f) An additional sum of \$7.00 is hereby established and assessed as additional court~~
371 ~~costs in each court proceeding as a surcharge for the Statewide Court Automation~~
372 ~~Fund.]~~

373
374 ~~[(g) Any other lawful and reasonable cost as may be assessed by the court as additional~~
375 ~~costs of court.]~~

376
377 **SECTION 3:** Chapter 14, Article II, Section 14-30 of the Nixa City Code is hereby
378 amended by repealing said Section in its entirety (Explanation: Language in bold-face
379 type (e.g., **thus**) is language to be to be added. Language in bold-faced brackets (e.g.,
380 **[thus]**) is not enacted and is intended to be omitted or deleted.):

381
382 ~~[Sec. 14-30. Search and seizure warrants.]~~

383
384 ~~[(a) Subject to the provisions of this section, the code compliance officer is hereby~~
385 ~~authorized to apply for, and the municipal court judge is hereby authorized to grant,~~
386 ~~search and seizure warrants for the purpose of enforcing the provisions of this~~
387 ~~chapter.]~~

388
389 ~~[(b) For the purpose of enforcing the provisions of this chapter, the code compliance~~
390 ~~officer is authorized to enter property to inspect for or to abate any nuisance. If the~~
391 ~~code compliance officer cannot obtain consent to enter property, the city attorney may~~
392 ~~apply for a warrant from the municipal court judge. Such application shall state facts~~
393 ~~sufficient to show probable cause for issuance of a warrant to inspect or search for~~
394 ~~violations of this chapter, or to show that entry, seizure, or abatement is authorized by~~
395 ~~this chapter. The application may be supplemented by written affidavit or other~~
396 ~~supporting information.]~~

397
398 ~~[(c) The municipal court judge shall determine whether sufficient facts have been stated~~
399 ~~to justify the issuance of a warrant. If it appears from the application and any~~
400 ~~supporting information that there is probable cause to inspect or search for violations~~
401 ~~of this chapter, or that entry, seizure, or abatement is authorized by this chapter, a~~
402 ~~warrant shall be immediately issued authorizing such actions.]~~

403
404 ~~[(d) The search and seizure warrant issued by the municipal court judge shall describe~~
405 ~~the specific location subject to the warrant and what, if anything, may be inspected,~~
406 ~~seized, or abated on the property. Such warrant shall be served at reasonable hours~~
407 ~~and only by an official charged with the enforcement of this chapter and in the~~
408 ~~company of a uniformed police officer of the city during the execution of the warrant.~~
409 ~~Such warrant shall be executed by the code compliance official as soon as practicable~~

410 and shall expire if it is not executed within ten days after it has been issued by the
411 municipal court judge.]

412
413 **SECTION 4:** Savings Clause. Nothing in this Ordinance shall be construed to
414 affect any suit or proceeding now pending in any court or any rights acquired, or liability
415 incurred nor any cause or causes of action occurred or existing, under any act or
416 ordinance repealed hereby.

417
418 **SECTION 5:** Severability Clause. If any section, subsection, sentence, clause, or
419 phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect
420 the validity of the remaining portions of this Ordinance. The Council hereby declares that
421 it would have adopted the Ordinance and each section, subsection, sentence, clause, or
422 phrase thereof, irrespective of the fact that any one or more sections, subsections,
423 sentences, clauses, or phrases be declared invalid.

424
425 **SECTION 6:** This Ordinance shall be in full force and effect from and after its final
426 passage by the City Council and after its approval by the Mayor, subject to the provisions
427 of section 3.11(g) of the City Charter.

428

429

430 **ADOPTED BY THE COUNCIL THIS _____ DAY OF _____ 2024.**

431

432 ATTEST:

433

434 _____

435 PRESIDING OFFICER CITY CLERK

436

437

438 **APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2024.**

439

440 ATTEST:

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442 _____

443 MAYOR CITY CLERK

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445

446 APPROVED AS TO FORM:

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448 _____

449 CITY ATTORNEY