

AN ORDINANCE OF THE CITY COUNCIL OF NIXA, MISSOURI, AMENDING CERTAIN SECTIONS CONTAINED IN CHAPTER 16-OFFENSES AND MISCELLANEOUS PROVISIONS, ARTICLE I-IN GENERAL, ARTICLE II-OFFENSES INVOLVING INJURY TO THE PERSON, ARTICLE III-OFFENSES INVOLVING PROPERTY RIGHTS, ARTICLE IV-OFFENSES INVOLVING PUBLIC SAFETY, ARTICLE V-OFFENSES INVOLVING PUBLIC PEACE AND ORDER, ARTICLE VI-OFFENSES INVOLVING PUBLIC MORALS AND ARTICLE VII-OFFENSES INVOLVING GOVERNMENT FUNCTIONS OF THE ORDINANCES OF THE CITY OF NIXA, MISSOURI

WHEREAS, in 2014, the Missouri General Assembly approved S.B. 491 and H.B. 1371, substantially revising the criminal law of the State of Missouri, to become effective on January 1, 2017; and

WHEREAS, pursuant to § 79.110, RSMo., the Mayor and Council of the City “shall have power to enact and ordain any and all ordinances not repugnant to the constitution and laws of the state, and such as they shall deem expedient for the good government of the city, the preservation of peace and good order, the benefit of trade and commerce and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect, and to alter, modify or repeal the same”; and

WHEREAS, the Council of the City finds and determines that amending Chapter 16 of the City Code to be consistent with S.B. 491 and H.B. 1371 in that it promotes the general welfare and preserves the peace and good order of the City.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NIXA, MISSOURI, AS FOLLOWS:

Section One. Chapter 16-Offenses and Miscellaneous Provisions, Article I-In General shall be amended to include Section 16-.005 Definitions and Section 16-.006 Attempt which shall read as follows:

Article I – In General

Sec. 16-.005 -Definitions

In this Chapter, unless the context or specific section requires a different definition, the following definitions shall apply:

- (1) "Access": to instruct, communicate with, store data in, retrieve or extract data from, or otherwise make any use of any resources of, a computer, computer system, or computer network;
- (2) "Affirmative defense":

(a) The defense referred to is not submitted to the trier of fact unless supported by evidence; and

(b) If the defense is submitted to the trier of fact the defendant has the burden of persuasion that the defense is more probably true than not;

(3) "Burden of injecting the issue":

(a) The issue referred to is not submitted to the trier of fact unless supported by evidence; and

(b) If the issue is submitted to the trier of fact any reasonable doubt on the issue requires a finding for the defendant on that issue;

(4) "Commercial film and photographic print processor", any person who develops exposed photographic film into negatives, slides or prints, or who makes prints from negatives or slides, for compensation. The term commercial film and photographic print processor shall include all employees of such persons but shall not include a person who develops film or makes prints for a public agency;

(5) "Computer", the box that houses the central processing unit (CPU), along with any internal storage devices, such as internal hard drives, and internal communication devices, such as internal modems capable of sending or receiving electronic mail or fax cards, along with any other hardware stored or housed internally. Thus, computer refers to hardware, software and data contained in the main unit. Printers, external modems attached by cable to the main unit, monitors, and other external attachments will be referred to collectively as peripherals and discussed individually when appropriate. When the computer and all peripherals are referred to as a package, the term "computer system" is used. Information refers to all the information on a computer system including both software applications and data;

(6) "Computer equipment", computers, terminals, data storage devices, and all other computer hardware associated with a computer system or network;

(7) "Computer hardware", all equipment which can collect, analyze, create, display, convert, store, conceal or transmit electronic, magnetic, optical or similar computer impulses or data. Hardware includes, but is not limited to, any data processing devices, such as central processing units, memory typewriters and self-contained laptop or notebook computers; internal and peripheral storage devices, transistor-like binary devices and other memory storage devices, such as floppy disks, removable disks, compact disks, digital video disks, magnetic tape, hard drive, optical disks and digital memory; local area networks, such as two or more computers connected together to a central computer server via cable or modem; peripheral input or output devices, such as keyboards, printers, scanners, plotters, video display monitors and optical readers; and related communication devices, such as modems, cables and connections, recording equipment, RAM or ROM units, acoustic couplers, automatic dialers, speed dialers, programmable telephone dialing or signaling devices and electronic tone-generating devices; as well as any devices, mechanisms or parts that can be used to restrict access to computer hardware, such as physical keys and locks;

(8) "Computer network", two or more interconnected computers or computer systems;

(9) "Computer program", a set of instructions, statements, or related data that directs or is intended to direct a computer to perform certain functions;

(10) "Computer software", digital information which can be interpreted by a computer and any of its related components to direct the way they work. Software is stored in electronic, magnetic, optical or other digital form. The term commonly includes programs to run operating systems and applications, such as word processing, graphic, or spreadsheet programs, utilities, compilers, interpreters and communications programs;

(11) "Computer-related documentation", written, recorded, printed or electronically stored material which explains or illustrates how to configure or use computer hardware, software or other related items;

(12) "Computer system", a set of related, connected or unconnected, computer equipment, data, or software;

(13) "Confinement":

(a) A person is in confinement when such person is held in a place of confinement pursuant to arrest or order of a court, and remains in confinement until:

a. A court orders the person's release; or

b. The person is released on bail, bond, or recognizance, personal or otherwise; or

c. A public servant having the legal power and duty to confine the person authorizes his release without guard and without condition that he return to confinement;

(b) A person is not in confinement if:

a. The person is on probation or parole, temporary or otherwise; or

b. The person is under sentence to serve a term of confinement which is not continuous, or is serving a sentence under a work-release program, and in either such case is not being held in a place of confinement or is not being held under guard by a person having the legal power and duty to transport the person to or from a place of confinement;

(14) "Consent": consent or lack of consent may be expressed or implied. Assent does not constitute consent if:

(a) It is given by a person who lacks the mental capacity to authorize the conduct charged to constitute the offense and such mental incapacity is manifest or known to the actor; or

(b) It is given by a person who by reason of youth, mental disease or defect, intoxication, a drug-induced state, or any other reason is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(c) It is induced by force, duress or deception;

(15) "Controlled substance", a drug, substance, or immediate precursor in schedules I through V as defined in chapter 195, RSMo.;

(16) "Criminal negligence", failure to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow, and such failure constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation;

(17) "Custody", a person is in custody when he or she has been arrested but has not been delivered to a place of confinement;

(18) "Damage", when used in relation to a computer system or network, means any alteration, deletion, or destruction of any part of the computer system or network;

(19) "Dangerous instrument", any instrument, article or substance, which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury;

(20) "Data", a representation of information, facts, knowledge, concepts, or instructions prepared in a formalized or other manner and intended for use in a computer or computer network. Data may be in any form including, but not limited to, printouts, microfiche, magnetic storage media, punched cards and as may be stored in the memory of a computer;

(21) "Deadly weapon", any firearm, loaded or unloaded, or any weapon from which a shot, readily capable of producing death or serious physical injury, may be discharged, or a switchblade knife, dagger, billy club, blackjack or metal knuckles;

(22) "Digital camera", a camera that records images in a format which enables the images to be downloaded into a computer;

(23) "Disability", a mental, physical, or developmental impairment that substantially limits one or more major life activities or the ability to provide adequately for one's care or protection, whether the impairment is congenital or acquired by accident, injury or disease, where such impairment is verified by medical findings;

(24) "Elderly person", a person sixty years of age or older;

(25) "Forcible compulsion" either:

(a) Physical force that overcomes reasonable resistance; or

(b) A threat, express or implied, that places a person in reasonable fear of death, serious physical injury or kidnapping of such person or another person;

(26) "Incapacitated", a temporary or permanent physical or mental condition in which a person is unconscious, unable to appraise the nature of his or her conduct, or unable to communicate unwillingness to an act;

(27) "Inhabitable structure", a vehicle, vessel or structure:

(a) Where any person lives or carries on business or other calling; or

(b) Where people assemble for purposes of business, government, education, religion, entertainment, or public transportation; or

(c) Which is used for overnight accommodation of persons. Any such vehicle, vessel, or structure is inhabitable regardless of whether a person is actually present. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an inhabitable structure of another;

(28) "Knowingly", when used with respect to:

(a) Conduct or attendant circumstances, means a person is aware of the nature of his or her conduct or that those circumstances exist; or

(b) A result of conduct, means a person is aware that his or her conduct is practically certain to cause that result;

(29) "Law enforcement officer", any public servant having both the power and duty to make arrests for violations of the laws of this state, and federal law enforcement officers authorized to carry firearms and to make arrests for violations of the laws of the United States;

(30) "Misdemeanor", an offense so designated or an offense for which persons found guilty thereof may be sentenced to imprisonment for a term of which the maximum is one year or less;

(31) "Of another", property that any entity, including but not limited to any natural person, corporation, limited liability company, partnership, association, governmental subdivision or instrumentality, other than the actor, has a possessory or proprietary interest therein, except that property shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security arrangement;

(32) "Offense", any ordinance violation;

(33) "Physical injury", slight impairment of any function of the body or temporary loss of use of any part of the body;

(34) "Place of confinement", any building or facility and the grounds thereof wherein a court is legally authorized to order that a person charged with or convicted of a crime be held;

(35) "Possess" or "possessed", having actual or constructive possession of an object with knowledge of its presence. A person has actual possession if such person has the object on his or her person or within easy reach and convenient control. A person has constructive possession if such person has the power and the intention at a given time to exercise dominion or control over the object either directly or through another person or persons. Possession may also be sole or joint. If one person alone has possession of an object, possession is sole. If two or more persons share possession of an object, possession is joint;

(36) "Property", anything of value, whether real or personal, tangible or intangible, in possession or in action;

(37) "Public servant", any person employed in any way by a government of this state who is compensated by the government by reason of such person's employment, any person appointed to a position with any government of this state, or any person elected to a position with any government of this state. It includes, but is not limited to, legislators, jurors, members of the judiciary and law enforcement officers. It does not include witnesses;

(38) "Purposely", when used with respect to a person's conduct or to a result thereof, means when it is his or her conscious object to engage in that conduct or to cause that result;

(39) "Recklessly", consciously disregarding a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation;

(40) "Serious emotional injury", an injury that creates a substantial risk of temporary or permanent medical or psychological damage, manifested by impairment of a behavioral, cognitive or physical condition. Serious emotional injury shall be established by testimony of qualified experts upon the reasonable expectation of probable harm to a reasonable degree of medical or psychological certainty;

(41) "Serious physical injury", physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body;

(42) "Services", when used in relation to a computer system or network, means use of a computer, computer system, or computer network and includes, but is not limited to, computer time, data processing, and storage or retrieval functions;

(43) "Sexual orientation", male or female heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, or having a self-image or identity not traditionally associated with one's gender;

(44) "Vehicle", a self-propelled mechanical device designed to carry a person or persons, excluding vessels or aircraft;

(45) "Vessel", any boat or craft propelled by a motor or by machinery, whether or not such motor or machinery is a principal source of propulsion used or capable of being used as a means of transportation on water, or any boat or craft more than twelve feet in length which is powered by sail alone or by a combination of sail and machinery, and used or capable of being used as a means of transportation on water, but not any boat or craft having, as the only means of propulsion, a paddle or oars;

(46) "Voluntary act":

(a) A bodily movement performed while conscious as a result of effort or determination. Possession is a voluntary act if the possessor knowingly procures or receives the thing possessed, or having acquired control of it was aware of his or her control for a sufficient time to have enabled him or her to dispose of it or terminate his or her control; or

(b) An omission to perform an act of which the actor is physically capable. A person is not guilty of an offense based solely upon an omission to perform an act unless the law defining the offense expressly so provides, or a duty to perform the omitted act is otherwise imposed by law;

(47) "Vulnerable person", any person in the custody, care, or control of the department of mental health who is receiving services from an operated, funded, licensed, or certified program.

State Law Reference – RSMo. §556.061

Sec. 16-.006 – Attempt

(a) Guilt for an offense in this Chapter may be based on an attempt to commit an offense if, with the purpose of committing the offense, a person performs a substantial step towards commission of the offense. A substantial step is conduct which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense.

(b) It is no defense to a prosecution that the offense attempted was, under the actual attendant circumstances, factually or legally impossible of commission if such offense could have been committed if the attendant circumstances had been as the actor believed them to be.

Similar State Law Reference – RSMo. § 562.012

Section Two. Chapter 16-Offenses and Miscellaneous Provisions, Article II-Offenses Involving Injury to the Person, Section 16-23-Common Assault, Section 16-54-Definitions; Locations of Offense, Section 16-55-Harrassment and Section 16-57-Stalking are hereby amended by repealing and re-enacting the same to read as follows:

Sec. 16-23 – Common Assault

- (a) A person commits the offense of assault if:
- (1) The person attempts to cause or recklessly causes physical injury, physical pain, or illness to another person; or
 - (2) With criminal negligence the person causes physical injury to another person by means of a firearm; or
 - (3) The person purposely places another person in apprehension of immediate physical injury; or
 - (4) The person recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person; or
 - (5) The person knowingly causes physical contact with another person knowing the other person will regard the contact as offensive or provocative; or
 - (6) The person knowingly causes or attempts to cause physical contact with a person with a disability which a reasonable person, who does not have a disability, would consider offensive or provocative.

State Law Reference – Similar Provisions, RSMO. §565.056

Sec. 16-54 – Definitions; Locations of Offense.

- (a) *Definitions:*

For purposes of sections 16-55 through 16-57, the following words shall have the meaning set forth herein:

COURSE OF CONDUCT means a pattern of conduct composed of two or more acts, which may include communication by any means, over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.” Such constitutionally protected activity includes picketing or other organized protests.

DISTURBS means to engage in a course of conduct directed at a specific person that serves no legitimate purpose and that would cause a reasonable person under the circumstances to be frightened, intimidated or suffer emotional distress.

(b) Determination of location of offense.

For purposes of sections 16-55 through 16-57, an offense alleged to have been committed by means of a writing, by telephone, by an electronic communications device or by any other means of communication, may be deemed to have been committed either at the place from which the communication was made or at the place where the communication was received.

Sec. 16-55 – Harassment.

(a) A person commits the offense of harassment if he or she, without good cause, engages in any act with the purpose to cause emotional distress to another person, and such act does cause such person to suffer emotional distress.

(b) This section shall not apply to activities of federal, state, county, or municipal law enforcement officers conducting investigations of violation of federal, state, county, or municipal law.

State Law Reference – Similar Provision, RSMo. §565.090

Sec. 16-57 Stalking.

(a) A person commits the offense of stalking if he or she purposely, through his or her course of conduct, disturbs or follows with the intent of disturbing another person and:

(1) Makes a threat communicated with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety, the safety of his or her family or household member, or the safety of domestic animals or livestock as defined in § 276.606, RSMo., kept at such person's residence or on such person's property. The threat shall be against the life of, or a threat to cause physical injury to, or the kidnapping of the person, the person's family or household members, or the person's domestic animals or livestock as defined in § 276.606, RSMo., kept at such person's residence or on such person's property; or

(2) At least one of the acts constituting the course of conduct is in violation of an order of protection and the person has received actual notice of such order; or

(3) At least one of the actions constituting the course of conduct is in violation of a condition of probation, parole, pretrial release, or release on bond pending appeal; or

(4) At any time during the course of conduct, the other person is seventeen years of age or younger and the person disturbing the other person is twenty-one years of age or older; or

(5) He or she has previously been found guilty of domestic assault, violation of an order of protection, or any other crime where the other person was the victim; or

(6) At any time during the course of conduct, the other person is a participant of the address confidentiality program under sections 589.660 to 589.681, RSMo., and the person disturbing the other person knowingly accesses or attempts to access the address of the other person.

(b) Any law enforcement officer may arrest, without a warrant, any person he or she has probable cause to believe has violated the provisions of this section.

(c) This section shall not apply to activities of federal, state, county, or municipal law enforcement officers conducting investigations of any violation of federal, state, county, or municipal law.

State Law Reference – Similar Provision, RSMo. §565.225

Section Three. CHAPTER 16-Offenses and Miscellaneous Provisions, Article III-Offenses Involving Property Rights, Section 16-88-Littering, Section 16-90- Stealing, Section 16-92-Trespass and Section 16-96 Breaking and Entering are hereby amended by repealing said sections and Section 16-88-Littering, Section 16-90- Stealing, and Section 16-92- Trespass are hereby re-enacted to read as follows:

Sec. 16-88 – Littering

(a) A person commits the offense of littering if he or she places, deposits, or causes to be placed or deposited, any glass, glass bottles, wire, nails, tacks, hedge, cans, garbage, trash, refuse, or rubbish of any kind, nature or description on the right-of-way of any public road or state highway or on or in any of the waters in this state or on the banks of any stream, or on any land or water owned, operated or leased by the state, any board, department, agency or commission thereof or on any land or water owned, operated or leased by the federal government or on any private real property owned by another without the owner's consent.

State Law Reference-- Similar Provisions, RSMo. § 577.070.

Sec. 16-90 – Stealing

(a) A person commits the offense of stealing if he or she:

(1) Appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion;

(2) Attempts to appropriate anhydrous ammonia or liquid nitrogen of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion; or

(3) For the purpose of depriving the owner of a lawful interest therein, receives, retains or disposes of property of another knowing that it has been stolen, or believing that it has been stolen.

State Law Reference—Similar Provisions, RSMo. § 570.030

Sec. 16-92 – Trespass

(a) A person commits the offense of trespass if he or she knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure or upon real property.

(b) A person does not commit the offense of trespass by entering or remaining upon real property unless the real property is fenced or otherwise enclosed in a manner designed to exclude intruders or as to which notice against trespass is given by:

(1) Actual communication to the actor; or

(2) Posting in a manner reasonably likely to come to the attention of intruders.

State Law Reference – Trespass, RSMo. 569.140

Section Four. CHAPTER 16-Offenses and Miscellaneous Provisions, Article IV-Offenses Involving Public Safety, Division 2-Weapons, Section 16-143 Use of firearm or projectile weapon in the city limits, Section 16-144 Unlawful use of weapons, Section 16-146-Unlawful Transfer of Weapons, Section 16-147- Possession of Firearm Unlawful for Certain Persons-penalty-exceptions and Section 16-96 Breaking and Entering are hereby amended by repealing and re-enacting the same to read as follows:

Sec. 16-143. - Use of firearm or projectile weapon in the city limits.

(a) No person shall fire or discharge any firearm, or projectile weapon within the city limits; provided, however, that this section shall not apply to any officer discharging a firearm or projectile weapon in the execution of his official duties, nor shall it apply to residents who have obtained a permit from the chief of police which specifically prescribes the time, place, and type of firearm or projectile weapon which may be discharged.

Sec. 16-144. - Unlawful use of weapons.

(a) A person commits the offense of unlawful use of weapons, except as provided by sections 571.101 to 571.121, RSMo., if he or she knowingly:

(1) Carries, concealed upon or about his person, a knife, a firearm, a blackjack or any other weapon readily capable of lethal use into an area where firearms are restricted under section 571.107, RSMo.;

- (2) Sets a spring gun;
 - (3) Discharges or shoots a firearm into a dwelling house, a railroad train, boat, aircraft, or motor vehicle as defined in RSMo 302.010, or any building or structure used for the assembling of people;
 - (4) Exhibits, in the presence of one or more persons, any weapon readily capable of lethal use in an angry or threatening manner;
 - (5) Has a firearm or projectile weapon readily capable of lethal use on his person, while he is intoxicated, and handles or otherwise uses such firearm or projectile weapon in either a negligent or unlawful manner or discharges such firearm or projectile weapon unless acting in self-defense;
 - (6) Discharges a firearm within 100 yards of any occupied schoolhouse, courthouse, or church building;
 - (7) Discharges or shoots a firearm at a mark, at any object, or at random, on, along or across a public highway or discharges or shoots a firearm into any outbuilding;
 - (8) Carries a firearm or any other weapon readily capable of lethal use into any church or place where people have assembled for worship, or into any election precinct on any election day, or into any building owned or occupied by any agency of the federal government, state government, or political subdivision thereof;
 - (9) Discharges or shoots a firearm at or from a motor vehicle, as defined in RSMo 301.010, discharges or shoots a firearm at any person, or at any other motor vehicle, or at any building or habitable structure, unless the person was lawfully acting in self-defense; or
 - (10) Carries a firearm, whether loaded or unloaded, or any other weapon readily capable of lethal use into any school, onto any school bus, or onto the premises of any function or activity sponsored or sanctioned by school officials or the district school board.
- (b) Subsections (a)(1), (8), and (10) of this section shall not apply to the persons described in this subsection, regardless of whether such uses are reasonably associated with or are necessary to the fulfillment of such person's official duties except as otherwise provided in this subsection. Subsections (a)(3), (4), (6), (7), and (9) of this section shall not apply to or affect any of the following persons, when such uses are reasonably associated with or are necessary to the fulfillment of such person's official duties, except as otherwise provided in this subsection:
- (1) All state, county and municipal peace officers who have completed the training required by the police officer standards and training commission pursuant to RSMo 590.030 to 590.050 and who possess the duty and power of arrest for violation of the general criminal laws of the state or for violation of ordinances of counties or municipalities of the state, whether such officers are on or off duty, and whether such officers are within or outside of the law enforcement agency's jurisdiction, or all qualified retired peace officers, as defined in subsection (g) of this section, and who carry the identification defined in subsection (h) of this section, or any person summoned by such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;
 - (2) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;

- (3) Members of the Armed Forces or the National Guard while performing their official duty;
 - (4) Those persons vested by article V, section 1 of the Constitution of the state with the judicial power of the state and those persons vested by article III of the Constitution of the United States with the judicial power of the United States, the members of the Federal judiciary;
 - (5) Any person whose bona fide duty is to execute process, civil or criminal;
 - (6) Any federal probation officer or federal flight deck officer as defined under the federal flight deck officer program, 49 USC 44921 regardless of whether such officers are on duty, or within the law enforcement agency's jurisdiction;
 - (7) Any state probation or parole officer, including supervisors and members of the board of probation and parole;
 - (8) Any corporate security advisor meeting the definition and fulfilling the requirements of the regulations established by the board of police commissioners under RSMo 84.340;
 - (9) Any coroner, deputy coroner, medical examiner or assistant medical examiner;
 - (10) Any municipal or county prosecuting attorney or assistant prosecuting attorney or any circuit attorney or assistant circuit attorney, municipal, associate or circuit judge, who has completed the firearms safety training course required under RSMo 571.111(2); and
 - (11) Any member of a fire department or fire protection district who is employed on a fulltime basis as a fire investigator and who has a valid concealed carry endorsement under RSMo 571.111, when such uses are reasonably associated with or are necessary to the fulfillment of such person's official duties.
- (c) Subsections (a)(1), (5), (8), and (10) of this section do not apply when the actor is transporting such weapons in a nonfunctioning state or in an unloaded state when ammunition is not readily accessible or when such weapons are not readily accessible. Subsection (a)(1) of this section does not apply to any person 21 years of age or older transporting a concealable firearm in the passenger compartment of a motor vehicle, so long as such concealable firearm is otherwise lawfully possessed, nor when the actor is also in possession of an exposed firearm or projectile weapon for the lawful pursuit of game, or is in his dwelling unit or upon premises over which the actor has possession, authority or control, or is traveling in a continuous journey peaceably through this state. Subsection (a) (10) of this section does not apply if the firearm is otherwise lawfully possessed by a person while traversing school premises for the purposes of transporting a student to or from school, or possessed by an adult for the purposes of facilitation of a school-sanctioned firearm-related event or club event.
- (d) Subsections (a)(1), (8), and (10) of this section shall not apply to any person who has a valid concealed carry endorsement issued pursuant to RSMo 571.101 to 571.121, a valid concealed carry endorsement issued before August 28, 2013, or a valid permit or endorsement to carry concealed firearms issued by another state or political subdivision of another state.
- (e) Subsections (a)(3), (4), (5), (6), (7) (8), (9), and (10) of this section shall not apply to persons who are engaged in a lawful act of defense pursuant to RSMo 563.031.
- (f) Nothing in this section shall make it unlawful for a student to actually participate in school-sanctioned gun safety courses, student military or ROTC courses, or other school-sponsored

firearm-related events, provided the student does not carry a firearm or other weapon readily capable of lethal use into any school, onto any school bus, or onto the premises of any other function or activity sponsored or sanctioned by school officials or the district school board.

- (g) As used in this section, the term "qualified retired peace officer" means an individual who:
- (1) Retired in good standing from service with a public agency as a peace officer, other than for reasons of mental instability;
 - (2) Before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;
 - (3) Before such retirement, was regularly employed as a peace officer for an aggregate of 15 years or more, or retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;
 - (4) Has a non-forfeitable right to benefits under the retirement plan of the agency if such a plan is available;
 - (5) During the most recent 12-month period, has met, at the expense of the individual, the standards for training and qualification for active peace officers to carry firearms;
 - (6) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
 - (7) Is not prohibited by federal law from receiving a firearm.
- (h) The identification required by subsection (b)(1) of this section is:
- (1) A photographic identification issued by the agency from which the individual retired from service as a peace officer that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active peace officers to carry a firearm of the same type as the concealed firearm; or
 - (2) A photographic identification issued by the agency from which the individual retired from service as a peace officer; and
 - (3) A certification issued by the state in which the individual resides that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the state to meet the standards established by the state for training and qualification for active peace officers to carry a firearm of the same type as the concealed firearm.

State Law reference— Similar provisions, RSMo 571.030.

Sec. 16-146 – Unlawful Transfer of Weapons

- (a) A person commits the offense of unlawful transfer of weapons if he:

(1) Knowingly sells, leases, loans, gives away or delivers a firearm or ammunition for a firearm to any person who, under the provisions of section Sec. 16-147, is not lawfully entitled to possess such;

(2) Knowingly sells, leases, loans, gives away or delivers a blackjack to a person less than eighteen years old without the consent of the child's custodial parent or guardian, or recklessly sells, leases, loans, gives away or delivers any firearm to a person less than eighteen years old without the consent of the child's custodial parent or guardian; provided, that this does not prohibit the delivery of such weapons to any peace officer or member of the Armed Forces or National Guard while performing his official duty; or

(3) Recklessly sells, leases, loans, gives away or delivers a firearm or ammunition for a firearm to a person who is intoxicated.

(b) For purposes of this section a person “act recklessly” or is “reckless” when he or she consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

State Law Reference – Similar Provisions, RSMo. § 571.060, § 571.070.

Sec. 16-147 – Possession of Firearm unlawful for certain persons – penalty—exceptions

(a) A person commits the offense of unlawful possession of a firearm if such person knowingly has any firearm in his or her possession and:

(1) Such person has been convicted of a felony under the laws of this state, or of a crime under the laws of any state or of the United States which, if committed within this state, would be a felony; or

(2) Such person is a fugitive from justice, is habitually in an intoxicated or drugged condition, or is currently adjudged mentally incompetent.

(b) The provisions of subdivision (1) of subsection (a) of this section shall not apply to the possession of an antique firearm.

State Law Reference – Similar provisions, RSMo. § 571.070

Section Five. CHAPTER 16-Offenses and Miscellaneous Provisions, Article IV-Offenses Involving Public Safety, Division 3-Alcohol-Related Traffic Offenses, Section 16-178-Driving While Intoxicated or Drugged, Section 16-179-Driving Under the Influence of Alcohol are hereby amended by repealing and re-enacting the same and said Chapter 16, Article IV-Offenses Involving Public Safety, Division 3-Alcohol-Related Traffic Offenses shall hereby be amended to include Section 16-180-Chemical Test for Alcohol Content-Consent Implied and such amendments shall state as follows:

Sec. 16-178 – Driving while Intoxicated or drugged

(a) A person commits the offense of driving while intoxicated if he or she operates a vehicle while in an intoxicated or drugged condition.

(b) A person found guilty of the offense of driving while intoxicated or drugged as a first offense shall not be granted a suspended imposition of sentence:

(1) Unless such person shall be placed on probation for a minimum of two years; or

(2) A DWI court or docket created under section 478.007, RSMo. or other court-ordered treatment program is available, and where the offense was committed with fifteen-hundredths of one percent or more by weight of alcohol in such person's blood, unless the individual participates and successfully completes a program under such DWI court or docket or other court-ordered treatment program.

State Law Reference – Similar provisions, RSMo. § 577.010.

Sec. 16-179 – Driving under the influence of alcohol

(a) A person commits the offense of driving with excessive blood alcohol content if such person operates:

(1) A vehicle while having eight-hundredths of one percent or more by weight of alcohol in his or her blood; or

(2) A commercial motor vehicle while having four one-hundredths of one percent or more by weight of alcohol in his or her blood.

(b) As used in this section, percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred milliliters of blood or two hundred ten liters of breath and may be shown by chemical analysis of the person's blood, breath, saliva or urine. For the purposes of determining the alcoholic content of a person's blood under this section, the test shall be conducted in accordance with the provisions of sections 577.020 to 577.041, RSMo.

(c) A person found guilty of the offense of driving under the influence as a first offense shall not be granted a suspended imposition of sentence:

(1) Unless such person shall be placed on probation for a minimum of two years; or

(2) A DWI court or docket created under section 478.007, RSMo. or other court-ordered treatment program is available, and where the offense was committed with fifteen-hundredths of one percent or more by weight of alcohol in such person's blood, unless the individual participates and successfully completes a program under such DWI court or docket or other court-ordered treatment program.

State Law Reference – Similar provisions, RSMo. § 577.012.

Sec. 16-180 – Chemical Test for Alcohol Content- Consent Implied

(a) Any person who operates a vehicle upon the public highways of this City shall be deemed to have given consent, subject to the provisions of sections 577.019 to 577.041, RSMo., to a chemical test or tests of the person's breath, blood, saliva, or urine for the purpose of determining the alcohol or drug content of the person's blood pursuant to the following circumstances:

(1) If the person is arrested for any offense arising out of acts which the arresting officer had reasonable grounds to believe were committed while the person was operating a vehicle while in an intoxicated condition;

(2) If the person is under the age of twenty-one, has been stopped by a law enforcement officer, and the law enforcement officer has reasonable grounds to believe that such person was operating a vehicle or a vessel with a blood alcohol content of two-hundredths of one percent or more by weight;

(3) If the person is under the age of twenty-one, has been stopped by a law enforcement officer, and the law enforcement officer has reasonable grounds to believe that such person has committed a violation of the traffic laws of the state, or any political subdivision of the state, and such officer has reasonable grounds to believe, after making such stop, that such person has a blood alcohol content of two-hundredths of one percent or greater;

(4) If the person is under the age of twenty-one, has been stopped at a sobriety checkpoint or roadblock and the law enforcement officer has reasonable grounds to believe that such person has a blood alcohol content of two-hundredths of one percent or greater; or

(5) If the person, while operating a vehicle, has been involved in a collision or accident which resulted in a fatality or a readily apparent serious physical injury as defined in section 556.061, RSMo., or has been arrested as evidenced by the issuance of a uniform traffic ticket for the violation of any state law or county or municipal ordinance with the exception of equipment violations contained in chapters 306 and 307, RSMo, or similar provisions contained in county or municipal ordinances.

The test shall be administered at the direction of the law enforcement officer whenever the person has been stopped, detained, or arrested for any reason.

(b) The implied consent to submit to the chemical tests listed in subsection 1 of this section shall be limited to not more than two such tests arising from the same stop, detention, arrest, incident or charge.

(c) To be considered valid, chemical analysis of the person's breath, blood, saliva, or urine shall be performed, according to methods approved by the state department of health and senior services, by licensed medical personnel or by a person possessing a valid permit issued by the state department of health and senior services for this purpose.

(d) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person at the choosing and expense of the person to be tested, administer a test in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test taken at the direction of a law enforcement officer.

(e) Upon the request of the person who is tested, full information concerning the test shall be made available to such person. Full information is limited to the following:

(1) The type of test administered and the procedures followed;

(2) The time of the collection of the blood, breath, or urine sample analyzed;

- (3) The numerical results of the test indicating the alcohol content of the blood and breath and urine;
- (4) The type and status of any permit which was held by the person who performed the test;
- (5) If the test was administered by means of a breath-testing instrument, the date of the most recent maintenance of such instrument.

Full information does not include manuals, schematics, or software of the instrument used to test the person or any other material that is not in the actual possession of the state. Additionally, full information does not include information in the possession of the manufacturer of the test instrument.

(f) Any person given a chemical test of the person's breath pursuant to subsection 1 of this section or a field sobriety test may be videotaped during any such test at the direction of the law enforcement officer. Any such video recording made during the chemical test pursuant to this subsection or a field sobriety test shall be admissible as evidence at any trial of such person for a violation of any state law or county or municipal ordinance, and at any license revocation or suspension proceeding held pursuant to the provisions of chapter 302, RSMo.

State Law Reference – Similar provisions, RSMo. § 577.020.

Section Six. CHAPTER 16-Offenses and Miscellaneous Provisions, Article V-Offenses Involving Public Peace and Order, Section 16-224- Peace Disturbance is hereby amended by repealing and re-enacting the same to read as follows:

Sec. 16-224 – Peace Disturbance

(a) A person commits the offense of peace disturbance if he or she:

(1) Unreasonably and knowingly disturbs or alarms another person or persons by:

- a. Loud noise; or
- b. Offensive language addressed in a face-to-face manner to a specific individual and uttered under circumstances which are likely to produce an immediate violent response from a reasonable recipient; or
- c. Threatening to commit a felonious act against a person under circumstances which are likely to cause a reasonable fear that such threat may be carried out; or
- d. Fighting; or
- e. Creating a noxious or offensive odor;

(2) Is in a public place or on the private property of another without consent and purposely causes inconvenience to another person or persons by unreasonably and physically obstructing:

- a. Vehicular or pedestrian traffic; or

- b. The free ingress or egress to or from a public or private place.

State Law Reference- Similar provisions, RSMo. §574.010

Section Seven. CHAPTER 16-Offenses and Miscellaneous Provisions, Article VI-Offenses Involving Public Morals, Section 16-245-Possession, Control or Sale of Controlled Substances is hereby amended by repealing and re-enacting the same and said Chapter 16-Offenses and Miscellaneous Provision, Article VI-Offenses Involving Public Morals shall hereby be amended to include Section 16-246-Possession of Drug Paraphernalia and such amendments shall state as follows:

Sec. 16-245 – Possession, control or sale of controlled substances

(a) A person commits the offense of possession of a controlled substance if he or she knowingly possesses a controlled substance, except as authorized by chapter 195, RSMo.

(b) In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of chapter 195, RSMo., it shall not be necessary to include any exception, excuse, proviso, or exemption contained in this chapter or chapter 195, RSMo., and the burden of proof of any such exception, excuse, proviso or exemption shall be upon the defendant.

State Law Reference – RSMo. § 579.015

Sec. 16-246 – Possession of Drug Paraphernalia

(a) A person commits the offense of unlawful possession of drug paraphernalia if he or she knowingly uses, or possesses with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body, a controlled substance or an imitation controlled substance in violation of this Article or chapter 195, RSMo.

State Law Reference – RSMo. § 579.015

Section Eight. CHAPTER 16-Offenses and Miscellaneous Provisions, Article VII-Offenses Involving Government Functions, Section 16-269-Offense of Resisting or Obstructing a Police Officer, Section 16-270-False Reports to Police and Sec. 16-271-Failure to Appear in Court are hereby amended by repealing and re-enacting said sections to read as follows:

Sec. 16-269- Offense of resisting or interfering with arrest

(a) A person commits the crime of resisting or interfering with arrest, detention, or stop if, knowing that a law enforcement officer is making an arrest, or attempting to lawfully detain or stop an individual or vehicle, or the person reasonably should know that a law enforcement officer is making an arrest or attempting to lawfully detain or lawfully stop an individual or vehicle, for the purpose of preventing the officer from effecting the arrest, stop or detention, the person:

- (1) Resists the arrest, stop or detention of such person by using or threatening the use of violence or physical force or by fleeing from such officer; or

(2) Interferes with the arrest, stop or detention of another person by using or threatening the use of violence, physical force or physical interference.

(b) This section applies to:

- (1) Arrests, stops, or detentions, with or without warrants;
- (2) Arrests, stops, or detentions, for any crime, infraction, or ordinance violation; and
- (3) Arrests for warrants issued by a court or a probation and parole officer.

(c) A person is presumed to be fleeing a vehicle stop if that person continues to operate a motor vehicle after that person has seen or should have seen clearly visible emergency lights or has heard or should have heard an audible signal emanating from the law enforcement vehicle pursuing that person.

(d) It is no defense to a prosecution pursuant to subsection 1 of this section that the law enforcement officer was acting unlawfully in making the arrest. However, nothing in this section shall be construed to bar civil suits for unlawful arrest.

State Law Reference – RSMo. § 575.150

Sec. 16-270- Offense of making a false report

(a) A person commits the offense of making a false report if he or she knowingly:

- (1) Gives false information to any person for the purpose of implicating another person in an offense; or
- (2) Makes a false report to a law enforcement officer that an offense has occurred or is about to occur; or
- (3) Makes a false report or causes a false report to be made to a law enforcement officer, security officer, fire department or other organization, official or volunteer, which deals with emergencies involving danger to life or property that a fire or other incident calling for an emergency response has occurred or is about to occur.

(b) It is a defense to a prosecution under subsection 1 of this section that the person retracted the false statement or report before the law enforcement officer or any other person took substantial action in reliance thereon.

(c) The defendant shall have the burden of injecting the issue of retraction under subsection 2 of this section.

State Law Reference - RSMo. § 575.080

Sec. 16-271 - Interference with legal process

(a) A person commits the offense of interference with legal process if, knowing another person is authorized by law to serve process, he or she interferes with or obstructs such person for the purpose of preventing such person from effecting the service of any process.

(b) "Process" includes any writ, summons, subpoena, warrant other than an arrest warrant, or other process or order of a court.

State Law Reference – RSMo. § 575.080

Section Nine: All ordinances or portions of ordinances in conflict with this ordinance are hereby repealed.

Section Ten: This ordinance shall be in full force and effect from and after the date of its passage.

READ TWO (2) TIMES AND PASSED BY THE CITY COUNCIL FOR THE CITY OF NIXA, MISSOURI THIS 19th DAY OF DECEMBER 2016.

Presiding Officer

ATTEST:

City Clerk

APPROVED THIS _____ DAY OF DECEMBER, 2016

Mayor

ATTEST:

City Clerk