

**AN ORDINANCE OF THE CITY COUNCIL OF NIXA, MISSOURI,  
AMENDING CHAPTER 4-ALCOHOLIC BEVERAGES, SECTION 4-9-  
SALE TO DRUNKARDS, MINORS, 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 4, Section 4-9 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 4-9 of the City Code is hereby amended deleting it in its entirety and enacting, in lieu thereof, a new section 4-9 which shall read as follows:

**Sec. 4-9. – Sale to drunkards, minors.**

- (a) No person or his employee shall sell or supply intoxicating liquor, malt liquor or non-intoxicating beer or permit the same to be sold or supplied to a habitual drunkard or to any person intoxicated or appearing to be in a state of intoxication.
- (b) Intoxicating liquor shall not be given, sold, or otherwise supplied to any person under the age of 21 years, but this shall not apply to the supplying of intoxicating liquor to a person under such age for medicinal purposes only, or by the parent or guardian of such person, or to the administering of such intoxicating liquor, malt liquor or non-intoxicating beer to such person by a physician. It shall be a defense to prosecution under this subsection if:
  - (1.)The defendant is a licensed retailer, club, drinking establishment, or caterer or holds a temporary permit, or an employee thereof;
  - (2.)The defendant sold the intoxicating liquor to the minor with reasonable cause to believe that the minor was 21 or more years of age; and
  - (3.)To purchase the intoxicating liquor, the person exhibited to the defendant a driver's license, a state non-driver's identification card, or other official or apparently official document, containing a photograph of the minor and purporting to establish that such minor was 21 years of age and of the legal age for consumption of intoxicating liquor.

- (c) Any person under the age of twenty-one years, who purchases or attempts to purchase, or has in his or her possession, any intoxicating liquor as defined in section [311.020](#), RSMo., or who is visibly in an intoxicated condition as defined in section [577.001](#), RSMo., or has a detectable blood alcohol content of more than two-hundredths of one percent or more by weight of alcohol in such person's blood is guilty of an offense. For purposes of prosecution under this section or any other provision of this chapter involving an alleged illegal sale or transfer of intoxicating liquor to a person under twenty-one years of age, a manufacturer-sealed container describing that there is intoxicating liquor therein need not be opened or the contents therein tested to verify that there is intoxicating liquor in such container. The alleged violator may allege that there was not intoxicating liquor in such container, but the burden of proof of such allegation is on such person, as it shall be presumed that such a sealed container describing that there is intoxicating liquor therein contains intoxicating liquor.
- (d) For purposes of determining violations of any provision of this section, a manufacturer-sealed container describing that there is intoxicating liquor therein need not be opened or the contents therein tested to verify that there is intoxicating liquor in such container. The alleged violator may allege that there was not intoxicating liquor in such container, but the burden of proof of such allegation is on such person, as it shall be presumed that such a sealed container describing that there is intoxicating liquor therein contains intoxicating liquor.
- (e) Any person under the age of twenty-one years who purchases or attempts to purchase, or has in his or her possession, any intoxicating liquor, or who is visibly in an intoxicated condition as defined in section [577.001](#), RSMo., shall be deemed to have given consent 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. The implied consent to submit to the chemical tests listed in this subsection shall be limited to not more than two such tests arising from the same arrest, incident, or charge. 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. 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. 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 or breath sample or urine 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 performance of the most recent required 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) The provisions of this section shall not apply to a student who:

(1.) Is eighteen years of age or older;

(2.) Is enrolled in an accredited college or university and is a student in a culinary course;

(3.) Is required to taste, but not consume or imbibe, any beer, ale, porter, wine, or other similar malt or fermented beverage as part of the required curriculum; and

(4.) Tastes a beverage under subdivision (3) of this subsection only for instructional purposes during classes that are part of the curriculum of the accredited college or university. The beverage must at all times remain in the possession and control of an authorized instructor of the college or university, who must be twenty-one years of age or older. Nothing in this subsection may be construed to allow a student under the age of twenty-one to receive any beer, ale, porter, wine, or other similar malt or fermented beverage unless the beverage is delivered as part of the student's required curriculum and the beverage is used only for instructional purposes during classes conducted as part of the curriculum.

**State Law reference**— Similar provisions, RSMo 311.310, 311.325.

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

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 19<sup>th</sup> DAY OF DECEMBER 2016.**

\_\_\_\_\_  
Presiding Officer

ATTEST:

\_\_\_\_\_  
City Clerk

**APPROVED THIS \_\_\_\_\_ DAY OF DECEMBER, 2016**

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk