

BILL NO: 9235

ORDINANCE NO: 9235

AN ORDINANCE IN RELATION TO AMENDING SECTION 16-153 OF THE MOBERLY CITY CODE TO SPECIFY DRIVING WHILE INTOXICATED, DRUGGED, EXCESSIVE BLOOD ALCOHOL CONTENT. C

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MOBERLY, MISSOURI AS FOLLOWS, TO-WIT:

SECTION ONE: Section 16-153 of the Moberly City Code is hereby amended to read as follows:

(a) *Definition.*

1) *Controlled Substance, a drug, substance, or immediate precursor in schedules I to V listed in RsMO Section 195.017;*

2) *Drive, driving, operates, or operating, means physically driving or operating a vehicle or vessel.*

3) *Intoxicated, or intoxicated condition means a person is under the influence of alcohol, a controlled substance, or drug, or any combination thereof.*

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

1) *A person found guilty of the offense of driving while intoxicated as a first offense shall not be granted a suspended imposition of sentence: unless such person shall be placed on probation for a minimum of 2 years; or unless the individual participates and successfully completes a court ordered treatment program.*

(c) *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.*

3) *A person found guilty of a first offense under this section shall not be granted a suspended imposition of sentence: Unless such person shall be placed on probation for a minimum of two years; or unless the individual participates and successfully completes a court ordered treatment program.*

- (d) *As used in Section 16-153(c), 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 in Section 16-153(c), the test shall be conducted in accordance with the provisions of sections 577.020 to 577.041 RSMo.*
- (e) *Implied consent. Any person who operates a motor vehicle shall be deemed to have given consent to a chemical test or tests of his breath, blood, saliva or urine for the purpose of determining the alcohol or drug content of his blood. Such tests shall be performed according to the provisions of state law, in RSMo, sections 577.020 through 577.041.*
- (f) *Procedure on arrest. Any arrest for driving while intoxicated shall be handled as any other arrest for an offense of the same severity, except as follows:*
- 1) *As soon as practicable following such arrest, the police department shall obtain the driving record of the persons arrested.*
  - 2) *Any person who has a driving record that indicates a prior conviction for driving while intoxicated or driving with excessive blood alcohol content within ten (10) years of the date of the present alleged offense shall be subject to prosecution for said alleged offense in the circuit court of Randolph County, Missouri, at the option of the state prosecuting attorney. When such a driving record is determined, the city attorney shall inform the state prosecuting attorney of said driving record and the pending offense and the state prosecuting attorney, within five (5) days after the receipt of such information, shall inform the city attorney whether or not the municipal charge be dismissed and state charges filed. Failure on the part of the state prosecuting attorney to make such determination within the aforesaid period shall be deemed a waiver on behalf of the state of Missouri to prosecute such persons for driving while intoxicated charge in the state court.*
  - 3) *No person, regardless of his prior conviction record shall be prosecuted through the municipal court where it appears possible that a charge of vehicular manslaughter (RSMo, section 577.005) or vehicle injury (RSMo, section 577.008) might be sustained, until after the state prosecuting attorney shall have had the opportunity to review the case and to consider filing appropriate charges.*
- (g) *Procedure in the municipal court. No person charged with driving while intoxicated or driving with blood alcohol content shall have his case heard in municipal court except in accordance with the following procedure:*
- 1) *The defendant should either be represented by an attorney, or should voluntarily waive his right to such representation by execution of a written waiver. If the defendant chooses to do neither (or if because he is an indigent is unable to employ an attorney), the prosecution of the case may be suspended and the case referred to the state prosecuting official.*
  - 2) *Neither the municipal judge nor any other municipal official shall have the power to revoke any operator's or chauffeur's license*
- (h) *Reports to highway patrol. A record of the final disposition in any court proceeding involving a violation of section 16-153(b) or section 16-153(c) shall be forwarded to the Missouri State Highway Patrol within fifteen (15) days by the clerk of the court.*



(i) *Penalty*

- 1) *Any person convicted of driving while intoxicated shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), confinement in the county jail for not more than ninety (90) days, or both such fine and confinement.*
- 2) *Any person convicted of driving with blood alcohol content shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), confined in the county jail for not more than ninety (90) days, or both such fine and confinement.*
- 3) *Upon a plea of guilty or a finding of guilty for an offense of driving while intoxicated or driving with blood alcohol content, the court may (as a condition for suspending any permissible portion of any sentence or in addition to imposition of any penalties provided by law) order the convicted person to participate in and successfully complete an alcohol or drug related traffic offender education or rehabilitation program as described in RSMo, section 577.049. Such a program may be used as a condition for suspending any permissible portion of any sentence only one time*


(j) *Reimbursement of costs of arrest, when-limitations. Upon a plea of guilty of a finding of guilty for a first offense of violating the provisions of section 16-153(b) or (c), the court may, in addition to imposition of any penalties provided by law, order the convicted person to reimburse the state or local law enforcement agency which made the arrest for the costs associated with such arrest. Such costs shall include the reasonable cost of making the arrest, including the cost of any chemical test made under this chapter to determine the alcohol or drug content of the person's blood, and the costs of processing, charging, booking and holding such person in custody. The chief of police may establish a schedule of such costs, provided however, that the costs so assessed shall not exceed two hundred dollars (\$200.00).*

(k) *Expungement of records, alcohol related convictions. After a period of not less than ten (10) years, an individual who has pleaded guilty or has been convicted for a first alcohol-related driving offense which is in violation of this Code and which is not a conviction for driving a commercial motor vehicle while under the influence of alcohol and who since such date has not been convicted of any other alcohol-related driving offense may apply to the court in which they plead guilty or was sentenced for an order to expunge from all official records all recordation's of their arrest, plea, trial or conviction. If the court determines, after hearing, that such person has not been convicted of any alcohol-related driving offense in the ten years prior to the date of application for expungement, and has no other alcohol-related enforcement contacts as defined in section 302.525 RSMo, during that ten-year period, the court shall enter an order of expungement. The effect of such order shall be to restore such person to the status they occupied prior to such arrest, plea or conviction and as if such event had never taken place. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of their failure to recite or acknowledge such arrest, plea, trial, conviction or expungement in response to any inquiry made of them for any purpose whatsoever and no such inquiry shall be made for information relating to an expungement under this section. A person shall only be entitled to one expungement pursuant to this section. Nothing contained in this section shall prevent the Missouri Director of Revenue from maintaining such records as to ensure that an individual receives only one expungement pursuant to this section for the purpose of informing the proper authorities of the contents of any record maintained pursuant to this section.*

**SECTION TWO:** This Ordinance shall take effect and be in force from and after its passage and adoption by the Council of the City of Moberly, and its signature by the officer presiding at the meeting at which it was passed and adopted.

**PASSED AND ADOPTED** by the Council of the City of Moberly, Missouri, this 19 day of Sept., 2016.

**ATTEST:**

  
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**Presiding Officer at Meeting**

  
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**City Clerk**