

PUBLIC SAFETY AND HEALTH COMMITTEE REPORT
Wednesday, May 5, 2010 8:30 AM – 9:30 AM
Council Chambers, 140 West Pine Street, Missoula, Montana

Members Present: Dave Strohmaier, Pam Walzer, Roy Houseman, Bob Jaffe, Jon Wilkins, Lyn Hellegaard, Dick Haines, Renee Mitchell, Ed Childers.

Members Not Present:

Others Present: Jason Wiener, Mark Muir, Chris Odlin, Jim Nugent, Lonie Hutchinson, Jason Diehl, Gary Hendricks, Shaen McElravy, Gary Bakke.

I. ADMINISTRATIVE BUSINESS

1. Approve Minutes from [April 14, 2010](#) . Minutes approved unanimously.

II. PUBLIC COMMENT

III. CONSENT AGENDA ITEMS

1. Authorize the Mayor to sign contract with Mountain Water for the installation of a fire hydrant in the Franklin-to-Fort area ([memo](#)).—Regular Agenda (Jason Diehl) (Referred to committee: 04/26/2010)

MOTION: The committee recommends that the City Council authorize the Mayor to sign contract with Mountain Water for the installation of a fire hydrant in the Franklin-to-Fort area.

Jason Diehl described the location and history of annexation of the area. He indicated that this is the last hydrant needed for that particular annexation.

Pam Walzer asked about the funding source for the new hydrant.

Jason Diehl replied that it will use CIP funds. He described the funding.

Pam Walzer moved that the City Council authorize the Mayor to sign contract with Mountain Water for the installation of a fire hydrant in the Franklin-to-Fort area.

Dave Strohmaier asked Jason Diehl about the potential for the job to cost more or less than the estimate.

Jason Diehl replied that hydrant installation costs vary from site to site, but recent hydrant installations have been below the estimated cost. He cited the economic downturn.

Ed Childers indicated that affected residents will be pleased with the installation of this particular hydrant.

The vote to authorize the Mayor to sign contract with Mountain Water for the installation of a fire hydrant in the Franklin-to-Fort area was unanimous.

IV. REGULAR AGENDA ITEMS

1. Consider an [emergency ordinance](#) and an [ordinance](#) amending Missoula Municipal Code Title 10, entitled "Vehicles and Traffic," by adding Chapter 56 entitled "Refusal to submit to alcohol and/or drug tests" and enacting sections 10.56.010 through 10.56.030. ([revised regular ordinance 04/30/2010](#)) ([revised emergency ordinance 04/30/2010](#)) ([memo](#)) ([PS&H](#)) ([03/17/10 PS&H](#)) (Returned from Council floor: 03/22/2010)

MOTION: The committee recommends that the City Council adopt an [emergency ordinance](#) and an [ordinance](#) amending Missoula Municipal Code Title 10, entitled

"Vehicles and Traffic," by adding Chapter 56 entitled "Refusal to submit to alcohol and/or drug tests" and enacting sections 10.56.010 through 10.56.030.

Dave Strohmaier summarized the background of the proposed ordinance. He also described public concerns regarding the Constitutionality of the proposed ordinance. He indicated that the City Attorney has vetted the proposal. Dave discussed the possibility of making the proposed ordinance's penalty civil, not criminal.

Mark Muir described potential problems with making the proposed ordinance's penalty civil rather than criminal. He stated that a civil penalty would result in additional legal proceedings. This would result in additional court appearances for Police Officers. Additional court appearances will increase overtime costs and negatively impact officer morale when they are required to appear in court on a scheduled day off. He also provided statistics regarding convictions for lesser offenses in lieu of a DUI conviction.

Dave Strohmaier opened the discussion to public comment.

Shaen McElravy with Western Montana Addiction Services contrasted the penalties for operating a motor vehicle while intoxicated versus operating an airplane while intoxicated. He expressed his concern about the increase of DUI testing refusals as a way to avoid a DUI conviction, particularly for repeat offenders. He also provided [written comment](#)

Lonie Hutchison, coordinator for the Missoula County DUI task force, expressed her support for this ordinance. She contrasted the penalties for serving alcohol to minors versus penalties for DUI. She referenced the recent deaths of Montana Highway Patrolmen at the hands of impaired drivers.

Gary Bakke expressed his concern about costs of testing.

Mark Muir described different testing methods, and how they are implemented.

Gary Hendricks described a recent Felony DUI incident, and indicated his support for this ordinance. He presented information about convicted DUI offenders showing up for treatment while intoxicated.

Jon Wilkins asked Chief Muir about an officer's ability to ascertain if a suspected DUI subject has prior DUI convictions

Mark Muir responded that the officer usually does have access to that information.

Jon Wilkins supports a \$500 fine. He supports mandatory testing for subjects with prior convictions. He has concerns about criminalizing test refusal for first time offenders.

Mark Muir stated that 34% of DUI arrests result in guilty pleas of a lesser offense.

Jon Wilkins thinks that sentencing should be stricter.

Mark Muir stated that Police Officers do not have access to information indicating that a person was originally arrested for DUI, but then plead guilty to a lesser offense.

Bob Jaffe supports the ordinance. He is convinced that requiring sobriety testing is justified once reasonable suspicion has been established.

Mark Muir clarified that the ordinance does not speak to the issue of other sobriety testing.

Bob Jaffe would like to the language in the title of the ordinance inserted into the main body of the ordinance for clarification.

Renee Mitchell posed several scenarios regarding the application of the proposed ordinance.

Mark Muir clarified.

Renee Mitchell suggested vehicle forfeiture.

Dave Strohmaier indicated that vehicle forfeiture is a separate issue.

Mark Muir described some of the obstacles involved with vehicle forfeiture.

Jon Wilkins made the motion with an amendment to increase the fine to \$500. He expressed interest in pursuing vehicle forfeiture.

Roy Houseman indicated his support for the ordinance.

Dave Strohmaier clarified with Jon Wilkins that Jon motioned for a Civil infraction, not a Criminal infraction. Jon's amendment would increase the fine to \$500.

Roy Houseman indicated his support for a Criminal infraction with a \$300 fine.

Dave Strohmaier moved for a substitute motion for the original public hearing draft.

Bob Jaffe indicated support for Roy's proposal.

Ed Childers proposed an amendment to increase the fine to \$500, not a substitute motion.

Dave Strohmaier withdrew the substitute motion.

Ed Childers moved for an amendment to Jon's motion to make refusal a criminal rather than a civil offense.

Dave Strohmaier accepted the motion to make refusal a criminal rather than a civil offense.

Jon Wilkins called the question.

Motion carried

Dave Strohmaier called for a vote on the amendment to make refusal a criminal rather than a civil offense.

Motion for amendment passed with Mitchell, Wilkins, Jaffe, and Walzer voting 'no'.

Ed Childers proposed making the fine \$300.

Pam Walzer does not think that a \$200 difference in the fine will make a difference. She cited the overall monetary cost of a DUI to a defendant. She would like to determine where the revenue from the fines will be allocated.

Jon Wilkins would like to see the \$500 fine, and have it applied to Police overtime.

Dick Haines would like to see the \$500 fine. He thinks that it may help to be a deterrent. Dick called the question

Motion to amend passed with Houseman and Jaffe voting 'no'

Dave Strohmaier called for the proposed amendment to change the penalty from \$500 to \$300.

Motion failed.

Bob Jaffe asked about the discretion of the judge and ability of the defendant to pay.

Pam Walzer indicated that fine revenue should be earmarked, not placed in the General Fund.

Lyn Hellegaard would like the Police Chief's input on revenue issues.

Dave Strohmaier moved to vote on the main measure as amended.

Jon Wilkins accepted a 'friendly amendment' to include language from the ordinance title in the main body of the ordinance.

Jon Wilkins asked for clarification on the amended ordinance before voting.

Dave Strohmaier clarified that the amended ordinance makes refusal a criminal infraction, and that the fine will stand at \$500.

Motion passed 8-1 with Pam Walzer voting 'no'

V. HELD AND ON-GOING AGENDA ITEMS

1. Police Department Update – Ongoing in Committee. (Mark Muir)
2. Fire Department Update – Ongoing in Committee (Mike Painter)
3. Health Department Update – Ongoing in Committee. (Ellen Leahy)
4. An [ordinance](#) amending Missoula Municipal Code Chapter 6.09 entitled "Missoula Cat Ordinance" section 6.09.010 through 6.09.090 to amend definitions, to limit the number of cats over the age of four months that a person, family, or household can harbor, keep, or maintain to five and to enact other general amendments. ([PS&H](#)) (Returned from Council floor: 01/12/09)
5. An [ordinance](#) amending Missoula Municipal Code Title 6 entitled "Animals" generally amending Chapter 6.04 entitled "Animals Running at Large" and Chapter 6.08 entitled "Dogs and Pet Shops," increasing the fee when an animal is impounded and establishing a fee for a boarding kennel license. ([PS&H](#)) (Returned from Council floor: 01/12/09)
6. [Regular](#) and an [emergency ordinance](#) amending Missoula Municipal Code (MMC) Title 2, Chapter 2.32 by creating new Section 2.32.060 giving Missoula police arrest authority to five miles outside the city limits. ([memo](#)) ([PSH](#)) (Returned from Council floor: 05/03/2010)

V. ADJOURNMENT

The meeting adjourned at 9:40 AM. Submitted by Gregg Schonbachler.