

PUBLIC SAFETY AND HEALTH COMMITTEE REPORT
Wednesday, May 27, 2009 10:00 AM – 11:00 AM
Council Chambers, 140 West Pine Street, Missoula, Montana

Members Present: Ed Childers, Dick Haines, Lynn Hellegaard, John Hendrickson, Bob Jaffe, Renee Mitchell, Dave Strohmaier, Pam Walzer, Jason Wiener, Jon Wilkins

Members Not Present:

Other Present: Mark Muir, Jim Nugent, Gary Bakke, Cedric Haines, Marilyn Marler, Stacy Rye, Ruth Link, Rocky Sayer

I. ADMINISTRATIVE BUSINESS

1. Approve minutes from [May 13, 2009](#). Minutes approved unanimously.

II. PUBLIC & STAFF COMMENT

Mark Muir commented on the lawsuit that has recently been made public and also on the symposium that he recently attended about prescription drug use.

Ed Childers asked about the report that is mentioned in the newspaper article and if the findings in that report have been addressed?

Mark Muir stated that he believes the items mentioned in that report have already been addressed.

Jason Wiener stated he is encouraged to hear that the prescription drug problem is being looked at.

Mark Muir stated that on September 22, there will be a community wide opportunity to hear more about it.

III. CONSENT AGENDA ITEMS

IV. REGULAR AGENDA ITEM

1. Authorize Police Department to hire Internet Crimes against Children (ICAC) officer, purchase printer/copier/scanner, lease vehicle for ICAC program ([memo](#)).—Regular Agenda (Mark Muir) (Referred to committee: 04/20/09) **REMOVE FROM AGENDA**

Mark Muir stated that at this time he would like to withdraw this referral. The bidding process has not been successfully completed for the scanner/copier. The hiring list does not currently have any eligible candidates that could be hire immediately. The lease vehicle has already been addressed.

2. [Ordinance](#) amending Title 10 entitled "Vehicles and Traffic" Chapter 10.20 entitled "Operation of Vehicles" by adopting and establishing new sections 10.20.300, 10.20.310 and 10.20.320 generally prohibiting the use of hand-held mobile telephones and other electronic communication devices while simultaneously operating a motor vehicle or a bicycle. ([memo](#)) ([PSH](#)) (Returned from Council floor: 4/13/09) **REMOVE FROM AGENDA**

MOTION: The committee recommends the City Council deny the Ordinance amending Title 10 entitled "Vehicles and Traffic" Chapter 10.20 entitled "Operation of Vehicles" by adopting and establishing new sections 10.20.300, 10.20.310 and 10.20.320 generally prohibiting the use of hand-held mobile telephones and other electronic communication devices while simultaneously operating a motor vehicle or a bicycle.

Dave Strohmaier stated there was a motion on the floor to adopt the ordinance as currently written. He asked for public comment.

Cedric Haines stated that he is in favor of this ordinance.

Gary Bakke asked for clarification on Section 2 of the ordinance with regard to a "moving motor vehicle on a public highway." He recommended striking "on a public highway" in the last sentence. He questioned what a public highway is and what a public street is, and what the intent of operating any moving vehicle is. In Section 1, the statement about a public highway is not in there. To make it consistent and clear, the intent is not to allow the use of the cell phone while operating a moving motor vehicle.

Dave Strohmaier asked Chief Muir where the jurisdiction lies for enforcement on or off of public highways.

Mark Muir stated this would not be enforceable on a private lot. He stated there is a statewide definition of highway; it is a roadway that is open to public use that is maintained by a government entity.

Jon Wilkins asked if there was a law on the books that is already available to ticket people driving while using a cell phone.

Mark Muir stated that reckless driving, which would place the person or property at risk of injury or damage, yes.

Renee Mitchell asked if operating a vehicle or operating a moving vehicle is the same or if there is a difference?

Dave Strohmaier stated the intent is allow folks to sit in an idling vehicle and talk on the phone alongside the road and not prohibit the phone use.

Stacy Rye asked why there are separate laws for the various types of poor driving.

Mark Muir stated that the various laws have been adopted over time due to the need for an enhanced penalty or deterrent.

Bob Jaffe asked if the Chamber of Commerce or the MOR had any position on this issue.

Gary Bakke, Chamber of Commerce, stated they do not have a clear position from the Chamber's membership.

Ruth Link, Missoula Organization of Realtors (MOR), stated they do not have an official stance on this ordinance.

Bob Jaffe asked if the careless or reckless tickets are harder to prosecute, and if there is a secondary offense as well, can the secondary offense stand alone?

Mark Muir stated that no, it cannot.

Jim Nugent stated that the Montana Supreme Court hasn't decided whether if you have a secondary offense whether you have to obtain a conviction on the first primary offense in order to sustain the secondary offense.

Pam Walzer stated she would like to offer some amendments. The first would be to delete *bicycle* from Section 1: no person shall use a hand-held mobile telephone or other electronic communication device while operating a moving motor vehicle on a public highway within the city limits...

The second is to insert *within city limits* in the last sentence in Section 2: including those with hands-free accessories, while operating a moving motor vehicle within city limits on a public highway...

Jon Wilkins clarified that this would permit bicyclists to use cell phones.

Ed Childers stated there are statistics that say talking on a cell phone while driving is dangerous and that he doesn't want to have an ordinance that is unenforceable.

John Hendrickson asked what the priority would be for enforcing this ordinance. Called for question on the amendment.

Rocky Sayert stated he hoped there would not be support for the bicycle exemption from this ordinance.

Ed Childers stated Point of Order, one being the bicycle question and one being the moving vehicle question.

Dave Strohmaier stated the third issue being the public highway language. Vote on Call for the question: in favor: 9, opposed: 1.

Asked for a show of hands for the bicycle exemption amendment: in favor: 1, opposed: 9. Amendment fails.

Asked for a show of hands for the moving motor vehicle amendment: in favor: 3, opposed: 7. Amendment fails.

Asked for a show of hands for including "within the city limits" amendment: in favor: 8, opposed: 2. Amendment passes.

Jason Wiener called for question on the motion.

Dave Strohmaier asked for vote on the call for question. Unanimous.

Asked for a show of hands for the main motion as written: in favor: 3, opposed 7. Motion goes to the Council floor with recommendation for denial.

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 Chapter 10.42 of the Missoula Municipal Code entitled "Bicycles" that would require minors to wear headgear while bicycling on streets, roadways, sidewalks, alleys and trails; and holding responsible the parent or guardian of a minor found to be in violation of this ordinance. ([Alternative Ordinance](#)) ([PS&H](#)) (Returned from Council floor: 2/26/07)
5. Update on the Police facility project. ([memo](#)) – Regular Agenda (Mark Muir)(Referred to committee: 05/12/08)
6. 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)
7. 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)

8. Discussion on the MRL herbicide program within the city limits ([memo](#)).—Regular Agenda (Bob Jaffe)
9. Consider two ordinances concerning Aggressive Solicitation and Pedestrian Interference ordinances ([memo](#)).—Regular Agenda (Dave Strohmaier)

V. ADJOURNMENT

The meeting adjourned at 10:53 AM. Submitted by Leslie Willis.