

PUBLIC SAFETY AND HEALTH COMMITTEE REPORT
Wednesday, August 26, 2009 8:00 AM – 9:00 AM
Council Chambers, 140 West Pine Street, Missoula, Montana

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

Members Not Present: Lynn Hellegaard

Other Present: Mark Muir, Rob Scheben, Keithi Worthington, Jim Nugent, Mike Painter, Rod Austin, Keenan Whitt, Kate Morsch, Eran Fowler, Nathan Hoyme

I. ADMINISTRATIVE BUSINESS

1. Approve minutes from [August 19, 2009](#). Minutes approved unanimously.

II. PUBLIC & STAFF COMMENT

III. CONSENT AGENDA ITEMS

1. Confirmation of Police Officers Tim Harrington & Peter Woods ([memo](#)).—Regular Agenda (Mark Muir) (Referred to committee: 08/24/09) **REMOVE FROM AGENDA**

Motion: The committee recommends the City Council confirm the Mayor's appointment of Tim Harrington and Peter Woods as Police Officers with the Missoula Police Department for the City of Missoula.

Mark Muir stated these Officers have successfully completed their probationary period. He stated they have done an exceptional job and is looking forward to their confirmation by the City Council.

John Hendrickson made the motion to move the appointment to the council floor. Motion passed unanimously.

2. Confirm the Mayor's appointment of Fire Captain Chad Nicholson ([memo](#)).—Regular Agenda (Mike Painter) (Referred to committee: 08/24/09) **REMOVE FROM AGENDA**

Motion: The committee recommends the City Council confirm the Mayor's appointment of Chad Nicholson as Fire Captain with the Missoula Fire Department for the City of Missoula. (This motion should appear on the 09/21/2009 agenda).

Mike Painter asked the committee to ask the Mayor to confirm Chad Nicholson as a Fire Captain. He has successfully completed this year's probation and asked the committee to consider recommending his confirmation.

Pam Walzer made the motion to move the appointment to the council floor. Motion passed unanimously.

IV. REGULAR AGENDA ITEM

3. An [emergency ordinance](#) and an [ordinance](#) amending Missoula Municipal Code Title 9, entitled Public Peace, Morals and Welfare, Chapter 34 entitled Pedestrian Interference, Sections 9.34.020, 9.34.030, 9.34.040 and 9.34.050. ([memo](#)) ([Updated Memo](#)) ([PS&H](#)) (Referred to committee: 07/27/2009) **HELD IN COMMITTEE**

Dave Strohmaier stated the committee currently has a motion on the floor to adopt the ordinance. He had distributed some [Pedestrian Interference Ordinance Discussion Points](#) to the council late yesterday. He asked Chief of Police Muir if there are other reasons that make this prohibiting of sleeping or laying on the street a good idea.

Mark Muir stated that sleeping on sidewalks is not safe, and this type of conduct should not be encouraged. There are many assaults and robberies that happen every year to individuals who are asleep in public places. Overall, this appears to be a beneficial way to seek a solution to this problem.

Jason Wiener asked the Chief of Police how they anticipate this will change the behaviors of the people who sleep on the streets.

Mark Muir stated that this gives the police the opportunity to insure that individuals are checked on regularly, that the conduct being observed by individuals is something that can be acted on by police. With this ordinance, officers will be clearly covered to make these contacts and find out if there are ways to assist.

Jason Wiener stated this sounds like it will be expected that this will change the behaviors of the police officers. He asked what training is given to police in terms of initiating contact, what are the guidelines?

Mark Muir stated that because someone is sleeping on the sidewalk is not indicative that he or she needs community care.

Bob Jaffe "I have similar questions or issues about what is the real reason we are doing this. Answered the first question more along the lines that people sleeping on the street are at risk, essentially at risk of being assaulted by drunken youth. Again I see the behavior that needs help here is the assaulting of homeless people not the sleeping on the street. So, I'm not sure how this ordinance helps us here. Then we kind of refined it down that there is really the two things going on; the duty of care and then the desire to move folks along. I think the real issue is the need to move people along. Our downtown business community is rightfully sensitive about homeless people scaring off their customers and I think that is our issue. What I'm concerned about the ordinance is this how we solve the problem. Then there is the thing about napping in the park, I don't think it's the people worried about being harassed while they nap in the park, it's that there is this underlying concern about equal application of the law and that that matters. We don't create situations where we build our laws just to attack certain segments of the population. So that is really the issue that we are not doing that, but the conflict is that this is exactly what the intent is here. There is a certain segment of the population that we don't want to be present so we are trying to figure out a way so that we don't have to see them downtown. Then I'm not, I have all sorts of conflicting issues about how I feel about that, putting that aside, I'm not sure this ordinance, what its point is. The duty of care, I don't understand why the police don't have the authority, if they see someone sleeping on the street or sidewalk, to go over and see what is going on. I'm not sure this ordinance gets us there. Is there some kind of legal challenge, some precedent that police don't have the right to go address somebody that is blocking the sidewalk"?

Keithi Worthington stated the legal principle is the Community Caretaking Doctrine. It's sort of a balance. In order for the police to be able to stop and detain someone they have to have a reason. If someone is coherent, police officers can come up to him and ask him if he is O.K. If that person is sleeping, there is concern if they can even do that, other than to maybe wake them up once to ask them how they are doing. What the doctrine states is if someone is in distress and there appears to be a need for the police officer under the theory of a community caretaker to stop and assist that person, then they can do so. Distress has been found to be a car pulled over in the middle of the night and there appears that the car is not working and the person is in distress. So it needs to be a higher level of distress than someone simply sleeping.

Dave Strohmaier stated a few years ago, he was at the corner of Higgins and Pine and came across an individual who was passed out, vomited, breathing distress. The most disturbing part was the individuals having drinks 10 feet away who were doing nothing. Would this fall under the umbrella of what Chief Muir is discussing?

Mark Muir stated yes, in two ways: when a citizen calls and expresses concern to us that gives us an opportunity to act for that person's concern; the second part is there were visible signs of health issues.

Bob Jaffe stated this ordinance is not about community care, it is about removing homeless people from the sidewalk.

Mark Muir stated the conduct that is occurring does have an impact on others rights and their ability to have uninhibited passage along the sidewalks. He stated he does not believe the ordinances are being created in order to legally harass people. The streets and sidewalks belong to everyone and the hope for this is to make the community a better place. He stated this is not going to do away with the problem of homelessness.

Bob Jaffe replied what is bothering him is hearing this ordinance is for the community care, and that is not what this is about. He stated what it's about is the other users of the sidewalk are who being interfered with. If we could stay focused on that part of it, it would help us stay on the real issue.

Mark Muir stated the focus shifted in the beginning because the implication was being made on a regular basis that the police should just be able to intervene in this action and I'm here again today to tell you we are unable to just intervene in these situations where individuals are lying or sleeping in such a fashion as to disrupt pedestrian passage. Absent a total blockage of a sidewalk or an entrance to a business it does not constitute disorderly conduct and police are not legally able to take action. That is why we came to you with this as a recommendation of a way to be able to do it. That remains the reason, I agree this has gotten distorted, and it has gotten distorted out of having to defend the fact that we can't do anything about it. I apologize that somehow or another I have led you or any of the Council to believe that this is strictly about community care. That community care issue has come up as a result of this belief we should be able to do something without it.

Bob Jaffe "thank you for that clarification".

Jim Nugent stated that someone calling the police does not give them the protection from the Community Care Doctrine. One of the major problems here is what do you do with the person if the person needs assistance. He stated in Montana that intoxication is an illness; you may not arrest anyone for intoxication. If the police intervene, what do they do with them, and once they intervene, they have some legal responsibility.

Pam Walzer asked what happens when a few people are sleeping on a sidewalk and an officer wakes them up and finds them unable to wake up from being too intoxicated or what if they wake up and become belligerent.

Mark Muir stated both situations are going to lead to more lengthy involvement of law enforcement. The unresponsive person would be referred through the EMS system for medical care. If a person becomes belligerent, our officers have to try to generate voluntary compliance with that individual and it may possibly lead to arrest.

Pam Walzer asked what happens if a person is drunk enough to be awake but grumbling and rolling over, don't wake me up sort of things; or what if they are a repeat offender, the officer wakes them up, they get up, go to another location, go to sleep.

Mark Muir stated that the officer would spend a significant amount of time with an individual to encourage them to cease the illegal activity. The persistent offenders are going to eventually get taken into court, they will receive citations.

Dave Strohmaier stated due to the time constraints, this topic will be carried over to committee next week.

Jon Wilkins stated that he is fine with the ordinance the way that it is written and reminded everyone that this can be monitored. If abuse is occurring, the Council can change things. He asked Ellie Hill, from the Poverello, what are the primary reasons that people are sleeping on the sidewalk downtown because what I see sleeping on the sidewalk downtown are generally probably people who have alcohol problems or something similar, can you make it clear why are the people sleeping on the sidewalk and not at the Poverello?

Ellie Hill "I would say the vast majority are sleeping outside because they are under the influence, as you know, there is no place in Missoula if you are under the influence of alcohol to spend the night besides the jail or the emergency room at St. Pat's. So, to answer your question, most of them are what is called co-occurring. So they are mentally ill with underlying substance abuse issues. I can tell you that Fort Harrison, we are the homeless vets provider at the Poverello Center. But the VA's own website tells us that 70-80% of our chronically homeless veterans are co-occurring, so they are substance abusers with mental illness with substance abuse. A majority of those people on the street, we see visibly as town drunks, but we can tell you, and I brought social workers here today that can tell you, that it is really the mental illness that's in large part why they are on the sidewalk. I can tell you that most of those people would not choose to sleep in front of the Ox or in a vestibule in front of a business. They are not choosing that. There's no place else for them to go.

Jon Wilkins stated what I would like to see is to start discussion with the state to get mental health funding back. If we find there is abuse going on, there are steps we can take at that time to stop it.

Jim Nugent stated they aren't sleeping along the river because you have park hour limitations on your parks and open spaces and they're not allowed to be in your parks and open spaces at night. Also a separate ordinance prevents sleeping under bridges.

Ed Childers stated we live in a society that expects everybody to have a place to go; it expects everybody to have a reason to be there. These people don't, so we don't have a way to integrate those people into our society and we have no solutions. If it's our responsibility to take care of them, we're failing. But not everybody thinks everybody else is their responsibility and not everybody on the object end of that thinks its other people's responsibility to take care of them either so folks want to be left alone. The ordinance is intended to make a better place for people who have places and purposes; it's to make the downtown a better place to be in. It's not there to make the people who want to sleep on the sidewalk more comfortable. We give the police the authority and the responsibility to control other people's lives and that's not easy and they make mistakes. They have a policy manual that tries to keep that from happening and we have ordinances that to keep that from happening. We do our darnedest; it's just not a very good thing.

Dick Haines stated I think we just touched on something that is more significant, that's the mental health problem. Missoula is very short on experts in this area. Our prisons have something like 75% mental health patients. We need to plead for funding for help to deal with the mental health aspects.

Dave Strohmaier we will take this up again in committee next week. I would ask committee members to please come prepared, if you have motions to amend, we'll dive right into that. We'll also have an update from the police department next week.

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. Discuss measures to prohibit bicycle riding on sidewalks in downtown Missoula ([memo](#)).—Regular Agenda (Dave Strohmaier) (Referred to committee: 07/27/09)
 10. Authorize acceptance of the COPS (Community Oriented Policing Services) Hiring Recovery Program (CHRP) award ([memo](#)).—Regular Agenda (Mark Muir) (Referred to committee: 08/10/09)
 11. An [emergency ordinance](#) and an [ordinance](#) adopting Missoula Municipal Code Title 9, Chapter 36 entitled Solicitation and Aggressive Solicitation as Acts of Disorderly Conduct, Sections 9.36.010, 9.36.020, 9.36.030, 9.36.040, 9.36.050, 9.36.060, 9.36.070, 9.36.080 and 9.36.090. ([memo](#)) ([Updated Memo](#)) ([PS&H](#)) (Referred to committee: 07/27/2009)

V. ADJOURNMENT

The meeting adjourned at 9:00 AM. Submitted by Leslie Willis.