

PUBLIC SAFETY AND HEALTH COMMITTEE REPORT
Wednesday, February 17, 2010 8:00 AM – 9:00 AM
Council Chambers, 140 West Pine Street, Missoula, Montana

Members Present: Ed Childers, Roy Houseman, Bob Jaffe, Dave Strohmaier, Pam Walzer, Jason Wiener, Jon Wilkins

Members Not Present: Dick Haines, Lynn Hellegaard, Renee Mitchell

Other Present: Mark Muir, Pat Morgan, Jim Nugent, Jeb Taylor

I. ADMINISTRATIVE BUSINESS

1. Approve minutes from [January 27, 2010](#). Minutes approved unanimously.

II. PUBLIC COMMENT

1. Mark Muir announced retired Sergeant Bob Heinle's funeral service today and the shuttle services being offered.

III. CONSENT AGENDA ITEMS

1. Consider an ordinance of the Missoula City Council 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 ([memo](#)).- Regular Agenda (Dave Strohmaier)

Motion: The committee recommends the City Council set a public hearing on March 08, 2010 to consider 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 spoke briefly why this topic has been brought to the table. He asked Chief Muir to speak about his perspectives about this ordinance.

Mark Muir stated the MPD's intent is to reduce the number of alcohol impaired drivers on the street. Alcohol related arrests have increased significantly over the past years. Missoula and other larger cities in Montana appear to have a significantly higher rate of breath test refusals. He stated they support the ordinance.

Jim Nugent explained that this evolved from the DUI panel and is part of the discussion afterwards it was noted pursuant to Montana State Traffic Regulations, we have authority to be regulating people under the influence of alcohol and drugs on the streets as long as it's not in conflict with state law and because the state statutes don't specifically address this specific aspect of creating this type of an offense for a refusal, we do not believe this conflicts with any existing state law. But we want you to be aware that is the potential from those who want to challenge it they could try and raise that. Another aspect is that local governments should try to keep their laws consistent with state law, and we do not believe it is inconsistent.

Jason Wiener asked what the protocols are with deciding whether to administer a blood test to someone and what is involved with that? He also asked about the relation between probable cause and the admissibility of these tests and if that's a factor?

Mark Muir stated there are different tests administered throughout the state due to availability. One of the primary reasons that the breath test is used is because of the lower cost and the convenience. When an individual is asked for a breath test, the person has already been through enough for the officer to establish probable cause.

Bob Jaffe asked why is it a civic, what is the difference between a civic and the criminal penalty?

Mark Muir stated the civil penalties that are currently enacted in the State of Montana pertain to the license regulatory penalties. It involves the suspension of an individual's driver's license.

Bob Jaffe asked why this isn't a criminal charge? Why doesn't the state require this?

Mark Muir stated there will probably be arguments about the invasion of privacy and about the individual's right at the public hearing.

Bob Jaffe asked for an explanation of the language about the physical control of a motor vehicle? He also asked about how drugs are detectable?

Mark Muir stated a toxicologist is required to testify as to the levels that were found. For prescription drugs, a lab test is required.

Bob Jaffe made the motion to set a public hearing for March 8th, 2010. Motion passed unanimously.

Ed Childers asked what is the cost of a blow versus a non-blow prosecution?

Mark Muir stated a breath test cost is minimal.

Ed Childers asked if someone is found guilty, are they liable for the government's cost?

Mark Muir stated they can be held accountable for the costs of prosecution as well as jury costs and other fees. There is also a significant portion that is dependant on the individual's ability to pay.

Ed Childers asked if an individual gets fined \$300.00 for refusing a breath test, what is the total cost to the individual?

Mark Muir stated there is a \$15.00 surcharge as a municipal ordinance violation.

Ed Childers asked how intrusive is the breath test?

Mark Muir stated the cost of providing a preliminary alcohol screening test is negligible, the straws are very minimal.

Pat Morgan stated the municipal courts are currently using the scam bracelets for 2nd and 3rd DUI's. If the court has knowledge of high BAC's on 1st DUI's, they are using the scam bracelet for pre-trial supervision, which monitors their alcohol consumption.

Jed Taylor asked for a clear and accurate explanation of what problem this is trying to solve. He stated that this proposed ordinance creates the environment of telling people they have to prove to their government that they are innocent.

Dave Strohmaier called for the vote on the motion to set a public meeting. The motion passed unanimously.

IV. REGULAR AGENDA ITEM

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 an ordinance of the Missoula City Council amending Missoula Municipal Code Title 10 entitled Vehicles and Traffic, Chapter 42 entitled Bicycles for the purpose of changing the requirements for complying with traffic control devices and removing conflicting registration requirements by amending Sections 10.42.030 and 10.42.040. ([memo](#)).—Regular Agenda (Pam Walzer)

V. ADJOURNMENT

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