

PUBLIC SAFETY AND HEALTH COMMITTEE REPORT
Wednesday, December 8, 2010 9:00 AM – 10:00 AM
Council Chambers, 140 West Pine Street, Missoula, Montana

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

Members Not Present:

Others Present: Stacy Rye, Mike Brady, Jim Nugent, Scott Brodie, Casey Richardson, Brandee Tyree.

I. ADMINISTRATIVE BUSINESS

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

II. PUBLIC COMMENT

III. CONSENT AGENDA ITEMS

1. Consider an [ordinance](#) amending Missoula Municipal Code Title 9 entitled "Public Peace, Morals and Welfare" by creating Chapter 58 entitled "Social Host and Rental Space Gatherings involving consumption of Alcohol by Minors" and enacting Sections 9.58.010 through 9.58.030. ([memo](#))—Regular Agenda (Dave Strohmaier) (Referred to committee: 12/06/10) (**Held in Committee**)

Dave Strohmaier recalled the [January 27, 2010 PSH meeting](#) where the issue of DUI in Missoula and our community's response to impaired driving was discussed. Dave feels that a Social Host ordinance will address some of the issues raised during that discussion. The ordinance was crafted with information drawn from similar ordinances in Great Falls, Helena, and Billings. The purpose of the ordinance is to hold accountable those individuals who 'knowingly' host events where underage drinking occurs. He believes that the proposed ordinance addresses some of the concerns that arose during the January PSH meeting. The proposed ordinance includes the stiffest penalty that the municipality is allowed to impose. A first violation of the proposed ordinance carries a mandatory minimum \$500 fine that cannot be waived by the court. Second and subsequent offenses will carry a mandatory minimum \$500 fine that cannot be waived by the court in addition to two days in jail. If the minor involved in the underage drinking is under sixteen years of age, the jail time will increase to five days. There is also a provision for cost recovery to emergency responders.

Mike Brady reviewed Police Department 'Party Card' statistics for the last twelve months. Out of 184 contacts, there were 623 ID's checked, 143 Minor in Possession tickets issued, 42 Disorderly Conduct tickets issued, and 4 tickets were issued for unlawful transactions with children, or endangering the welfare of a minor. 14 parties had 50 or more people present. He stated that the proposed ordinance would not affect current Police procedures. Officers would not necessarily be aware if the offense was a second or subsequent. The Police Department would need to provide the court with the cost estimates for emergency response.

Scott Brodie outlined the cost estimates to the City for a recent underage drinking party that the Police Department responded to in the Grant Creek area on November 14th of this year. He stated that the call involved one lieutenant, two sergeants, and 8 patrol officers and tied up resources for 3-1/2 hours. All of the officers had to complete written reports documenting the incident. This caused the City to incur overtime costs. Scott estimated the total cost to the taxpayers was \$1,704.00. The estimate does not include overhead costs. Officers lost, but later recovered, a portable breath testing device. 39 individuals were under the age of 21, and 9 individuals were over the age of 21. 15-20 vehicles were involved. Some suspects escaped.

Lynn Hellegaard asked why the current laws on the books were not sufficient.

Mike Brady responded that the current laws do not allow for cost recovery. The proposed ordinance would allow for cost recovery and accountability.

Jon Wilkins asked how the police would determine the identity of the host.

Scott Brodie responded that in the case of the Grant Creek party, four individuals were identified as residents. Three of the residents were cited for disorderly conduct. The California-based owners were notified of the party, and were unaware of the situation.

Jon Wilkins posed a scenario where a residence was repeatedly visited by law enforcement, and that the property management company was aware of the situation. He asked if the property management company could be cited under the proposed ordinance.

Scott Brodie replied that the property owner could be cited for maintaining a public nuisance. Property owners are generally notified of incidents.

Jon Wilkins cited a local example. He expressed concern about rentals that are problematic regardless of the tenant turnover.

Renee Mitchell asked how many of the Grant Creek party residents were of legal drinking age.

Scott Brodie replied that all of the tenants were of legal drinking age.

Renee Mitchell posed a scenario where underage guests gain possession of alcohol without the host's knowledge.

Dave Strohmaier reiterated the point the proposed ordinance presumes 'knowledge'.

Renee Mitchell posed a scenario where minors are staying in a house when the parents are away and drinking is involved.

Mike Brady thought that the homeowner would not be held accountable as they did not know.

Scott Brodie provided an account of an incident where minors were staying in a house when the parents are away and drinking was involved. The property owner (parent) was given notice. If a subsequent offense occurred, the property owner might very well be held accountable.

Renee Mitchell asked about court appearances and fines for minors or host violations.

Mike Brady responded that he would need to check with the court.

Ed Childers thought that tracking the costs of incidents would be a good tool for budgeting purposes.

Mike Brady stated that this is the first proposal that allows for cost recovery.

Bob Jaffe asked for anyone in the Council Chambers who had not consumed alcohol as a minor to raise their hand. No one raised their hands. Bob stated that he then has a 'reasonable expectation' that the minors in his rental are drinking there based on the response from the room. He figures that there is a 'reasonable expectation' that minors are consuming alcohol at bars, events, and sporting events. He expressed concern about 'reasonable proof of knowledge' and 'reasonable steps' and how they are defined. He feels that the proposed ordinance could be too broad.

Jim Nugent stated that with the burden of proof, the standards of 'beyond a reasonable doubt' apply. The court must determine if proof 'beyond a reasonable doubt' is met. The civil standard would apply

Bob Jaffe asked about jury instructions

Jim Nugent clarified and referred to instructions that are available.

Bob Jaffe asked about the cost recovery provision. He asked if cost recovery might apply to other types of incidents.

Brandee Tyree with MUSAP provided a [handout](#) . She highlighted some of the information covered in this handout with regards to underage drinking.

Pam Walzer asked Jim Nugent to explain the difference between the proposed ordinance and current Montana statutes, particularly providing alcohol to a minor.

Jim Nugent responded that the proposed ordinance is intended to address situations where there are social 'gatherings'. He feels that the proposed ordinance fills gaps in State law.

Dave Strohmaier stated that the State statutes address serving and providing. The proposed ordinance holds persons hosting the event accountable. The proposed ordinance is more specific.

Pam Walzer reiterated Dave's statement for clarity. She provided a scenario.

Jim Nugent clarified that the proposed ordinance is targeting the 'facilitators' of underage alcohol consumption.

Roy Houseman expressed concern about the proposed ordinance. He feels that the proposed ordinance is overzealous. He cited the commercial glorification of alcohol consumption. He thinks that alcohol consumption by younger individuals should be targeted more aggressively than underage drinking between the ages of 18 and 21.

Dave plans to hold this item in committee.

Stacy Rye indicated a preference to rework the proposed ordinance to move away from the 'abstinence-only' approach. She cited issues with 'reasonable expectation' and how that would be determined. She thinks that the proposed ordinance is overreaching.

IV. REGULAR AGENDA ITEMS

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. Review implementation of the Missoula Outdoor Lighting Ordinance ([memo](#)).—Regular Agenda (Dave Strohmaier) (Referred to committee: 08/09/10)

V. ADJOURNMENT

The meeting adjourned at 10:00 AM. Submitted by Gregg Schonbachler.