

**PUBLIC SAFETY AND HEALTH COMMITTEE REPORT**  
**Wednesday, February 9, 2011 9:00 AM – 10:00 AM**  
**Council Chambers, 140 West Pine Street, Missoula, Montana**

**Members Present:** Dave Strohmaier, Pam Walzer, Cynthia Wolken, Bob Jaffe, Renee Mitchell, Dick Haines, Lyn Hellegaard, Ed Childers.

**Members Not Present:** Jon Wilkins

**Others Present:** Mark Muir, Jim Nugent

## **I. ADMINISTRATIVE BUSINESS**

1. Approve Minutes from [January 26, 2011](#) and [February 2, 2011](#). Minutes approved unanimously.

## **II. PUBLIC COMMENT**

## **III. CONSENT AGENDA ITEMS**

1. Confirmation of Police Officers Ethan Smith & Chris O'Leary. ([memo](#))—Regular Agenda (Mark Muir) **(REMOVE FROM AGENDA)**

**Motion: The committee recommends that the City Council confirm Police Officers Ethan Smith & Chris O'Leary.**

Mark Muir provided brief biographies for Ethan Smith & Chris O'Leary, and he recommends that the City Council confirm them as Police officers.

Pam Walzer moved to recommend that the City Council confirm Police Officers Ethan Smith & Chris O'Leary.

Motion passed unanimously.

2. 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)

**Motion: The committee recommends that the City Council set a public hearing on March 14, 2011 on 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.**

Dave Strohmaier provided the committee with an updated version of the ordinance. He noted that the language regarding 'minors' had been changed to 'underage persons'.

Pam Walzer noted that she had suggested that the language regarding 'underage persons' be changed to 'minors'. She noted the philosophical differences between the different wordings.

Dave Strohmaier stated that the language in the ordinance is now consistent with the intent of the ordinance being directed at the issue of underage persons. He discussed changes to the definition of 'knowledge' in the proposed ordinance. He described the second definition of 'knowledge' in the proposed ordinance. He noted changes to the definition of 'purposely' in the proposed ordinance. He asked Chief Muir for clarification.

Mark Muir stated that the definitions are separate. The impact of the modified definitions reflect the concerns in respect to landlords or parents who are away, and clarify intent. He discussed the issues regarding potential burdens placed on landlords who rent to underage persons. Adding 'purposely' to the language would define more clearly the issue of intent. He described the concept of intent and the burden of proof in relationship to the definition of 'purposely'. He discussed the standards of negligence. He feels that the changes in wording protect landlords and parents of underage persons. He provided an example of knowledge and intent.

Dave Strohmaier noted that the definitions of 'knowingly' and 'purposely' as used in the proposed ordinance were adopted from State statutes. He noted that 'Fraternity' and 'Sorority' have also been added to the text of the proposed ordinance.

Lyn Hellegaard noted that House Bill 20 in the State Legislature uses the term 'underage persons', and the proposed City ordinance should use the same terminology.

Renee Mitchell noted that the Missoula Organization of Realtors is opposed to this proposed ordinance due to concerns about renting to individuals under the age of 21. She expressed concerns about holding a landlord accountable for the actions of their tenants.

Dave Strohmaier pointed out that the Missoula Organization of Realtors was only concerned with a small portion of the proposed ordinance and he feels that their concerns have been addressed with changes in the language of the proposed ordinance.

Renee Mitchell expressed her concerns about the 'clumsiness' of the language in the proposed ordinance. She would like to see the language streamlined

Pam Walzer pointed out that the rules for replacing a City Council member position are also cumbersome. She supports using language adopted from State statutes. She also pointed out that many underage college student renters are good tenants. She indicated her preference to use the term 'minor' instead of 'underage person'.

Cynthia Wolken expressed concern about unintended consequences resulting from the proposed ordinance, and the potential discrimination in housing toward college students.

Dave Strohmaier expressed his desire to move this issue to a public hearing in order to elicit public feedback before further committee discussion.

Renee Mitchell indicated that she does not appreciate the implication that she is stereotyping college age 'underage persons' as generally being a nuisance to the community. She feels that public education on this issue can help address the problem.

Bob Jaffe stated that clarifying the definitions of 'knowingly', 'purposely', and 'negligently' is helpful. He would like to see language that explicitly addresses 'negligent'. He would like to see language that excludes landlords altogether.

Dave Strohmaier asked Chief Muir how many incidents have involved landlords.

Mark Muir provided an example of a problem rental house. He cited the potential for holding a landlord accountable by pursuing a charge of maintaining a public nuisance.

Bob Jaffe feels that the Missoula Organization of Realtors has a valid grievance with the issue of landlord accountability. He supports moving this issue to a public hearing. He asked that if the legislature passed H.B. 20, and the County enacts a Social Host Ordinance, how will this affect the City?

Mark Muir responded that if both the City and County enact Social Host ordinances, and if there is conflicting language, City Law Enforcement Officers would enforce the City ordinance first. He discussed several scenarios.

Bob Jaffe asked if an individual could be charged under both ordinances.

Mark Muir responded that they could not unless the County ordinance was significantly different from the City ordinance.

Bob Jaffe moved to set a public hearing

Dave Strohmaier suggested a public hearing be held on March 7<sup>th</sup>.

Mark Muir stated that he is unavailable on March 7<sup>th</sup>.

Dave Strohmaier suggested a public hearing be held on February 28<sup>th</sup>

Bob Jaffe thinks that February 28<sup>th</sup> is too soon.

Dave Strohmaier suggested public hearing be held on March 14<sup>th</sup>.

Ed Childers feels that this issue is becoming too convoluted.

Mark Muir reiterated the original intent of the proposed ordinance. He stated that if no underage drinking is occurring at a residence, the only recourse for Law Enforcement is to pursue a charge of disorderly conduct. He described the penalties for a conviction of disorderly conduct.

Jim Nugent stated that the maximum penalty for a conviction of disorderly conduct is ten days in jail.

Ed Childers asked who would be cited.

Mark Muir responded that the renter or property owner is held accountable for disorderly conduct when creating a public nuisance.

Ed Childers described a hypothetical scenario.

Mark Muir clarified.

Ed Childers asked if the maximum fine for disorderly conduct was \$500.00.

Jim Nugent replied that the maximum fine for disorderly conduct is \$100.00 and up to 10 days in jail.

Ed Childers stated that the City is looking for a way to recover the cost of a public safety response to an incident covered by the proposed Social Host ordinance. He summarized his understanding of the proposed ordinance, and expressed his concerns about other issues that are not addressed by the proposed ordinance.

Dave Strohmaier suggested that Ed propose another referral to deal with some of the concerns that Ed expressed.

Jim Nugent asked if any revisions need to be made resulting from today's discussion.

Dave Strohmaier stated that the paired definitions of 'knowingly' and 'purposely' be included and possibly striking the original definition of 'knowledge'.

Bob Jaffe feels that the issue will be referred back to committee, so the exact language can be worked on after public comment is heard.

Dave Strohmaier clarified that he will strike the first definition of 'knowledge', and use the definition of 'knowingly and purposely'

Jim Nugent stated that there should be only one alternative.

Mark Muir stated that the language under the prohibited acts section should use 'knowingly and 'purposely.'

Dave Strohmaier agreed.

The committee voted unanimously to hold a public hearing on March 14, 2011 regarding the proposed ordinance.

#### **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)

#### **V. ADJOURNMENT**

The meeting adjourned at 9:56 AM. Submitted by Gregg Schonbachler.