

**PUBLIC SAFETY AND HEALTH COMMITTEE REPORT**  
**Wednesday, March 3, 2011 8:00 AM – 9:00 AM**  
**Council Chambers, 140 West Pine Street, Missoula, Montana**

**Members Present:** Dave Strohmaier, Pam Walzer, Bob Jaffe, Jon Wilkins, Renee Mitchell, Lyn Hellegaard, Ed Childers.

**Members Not Present:** Cynthia Wolken, Dick Haines

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

## **I. ADMINISTRATIVE BUSINESS**

1. Approve Minutes from [March 2, 2011](#). Minutes approved unanimously.

## **II. PUBLIC COMMENT**

## **III. CONSENT AGENDA ITEMS**

1. [Ordinance](#) to amend Missoula Municipal Code Title 9 entitled "Public Peace, Morals and Welfare" by creating Chapter 9.58 entitled "Social Host and Rental Space Gatherings involving consumption of Alcohol by underage persons" and enacting Sections 9.58.010 through 9.58.040. ([Memo](#)) ([PS&H](#)) (Returned from Council floor: 03/14/11) (**Held in Committee**)

Dave Strohmaier asked Jim Nugent if Montana Code 16-6-305 provided for an exemption to the proposed ordinance in regards to church services and religious gatherings where non-intoxicating quantities of alcohol are served to minors or underage individuals,

Jim Nugent stated that he believes the exemption applies.

Dave Strohmaier addressed Ed Childers' concern regarding the awkward wording in the proposed ordinance in Section 2, 9.58.020 paragraph 'I', specifically the use of the word 'negatives'. Dave pointed out that the language used is identical to State statute.

Jim Nugent indicated that 'negatives' could be changed to read more clearly without any change in the intent of the definition.

Ed Childers asked what the sentence in question means.

Dave Strohmaier feels that the wording can be changed to read more clearly, and is open to an amendment.

Jim Nugent and Lyn Hellegaard suggested the word should probably read 'negates'.

Dave Strohmaier was inclined to agree.

Dave Strohmaier addressed Ed Childers' concern regarding the redundancy in the proposed ordinance in Section 2, 9.58.020 paragraph 'J', specifically the use of the term 'of any age'.

Jim Nugent suggested that the wording pertains to the issue of adult being 18 and over, and underage in regards to drinking is under 21.

Ed Childers asked if it should read '18 years or older'.

Jim Nugent replied that '18 years or older' is considered 'adult'.

Pam Walzer asked if 'Minor in Possession' is defined as a person under 21.

Jim Nugent replied that is correct.

Pam Walzer feels that the term still needs to be defined.

Bob Jaffe referred to a San Diego Social Host ordinance where a party hosted by a person under 18 was not subject to the ordinance as the wording was not specific enough. He suggested that the ordinance should be specific to adults.

Dave Strohmaier stated that laws pertaining to contributing to the delinquency of a minor are targeted towards adults.

Jim Nugent stated that a minor might have to be charged in Youth Court rather than Municipal Court. Collecting response fees from a minor could also be problematic.

Dave Strohmaier stated that was not the intent of the proposed Social Host ordinance to target minors.

Dave Strohmaier raised Bob Jaffe's concern regarding the definition of the term 'facilitate'.

Jim Nugent stated that proof of 'facilitate' would rely heavily on the Police being able to prove beyond a reasonable doubt that facilitation has occurred. He does not believe that defining 'facilitate' within the proposed ordinance is necessary.

Lyn Hellegaard stated that she was contacted by property owners who would like to see the terms property manager, lessor, and landlord removed from the entire ordinance. The property owners stated that they have zero tolerance for underage drinking on their properties. They would like to be notified of underage drinking violations on their properties as that would violate the lease, and allow them to take the appropriate actions. She asked if it will only be the adults on the lease agreement who are present that will be charged in the instance of a violation. She asked what would happen if an underage individual arrived at a party in possession or under the influence of alcoholic beverages.

Mark Muir stated that Police officers would use discretion when enforcing the ordinance. In regards to having the terms property manager, lessor, and landlord removed from the entire ordinance, he cited situations where facilities are rented to individuals to host events that involve alcohol. He provided an example and some scenarios.

Dave Strohmaier suggested possibly striking the final sentence and the three points following it from the definition of social host, and the term 'adult' from Section 2, 9.58.020 paragraph 'J' that defines social host. He feels that the intent would not be diminished.

Lyn Hellegaard asked if the ordinance could be specific to residential property owners.

Mark Muir stated that Dave's suggestion would work.

Renee Mitchell suggested that property owners need to ensure that their lease agreements contain a clause prohibiting illegal activity. She expressed concern that parents of an individual between the age of 18 and 21 hosting an underage party might be held responsible.

Mark Muir responded that the individual between the age of 18 and 21 would be held accountable, not the parents. If the host is under 18, the parents are responsible for liability.

Renee Mitchell asked if the proposed ordinance would be in conflict with confidentiality laws currently on the books.

Jim Nugent responded that if charges are filed against an adult, the charges are public record, so confidentiality would not apply. He stated that lawsuits have been filed against entities that provided the alcohol in wrongful death cases.

Ed Childers feels that the property management concerns are addressed. Ed moved to pass the proposed ordinance with the two amendments, changing the word 'negative', and removing the word 'adult'.

Pam Walzer proposed an amendment to replace all terms that say 'underage' with the term 'minor', and to amend Section 'K ' to replace '21' with '18'. She described her feelings regarding the responsibilities of adults between the ages of 18 and 21.

Lyn Hellegaard offered an amendment to remove the word 'adult' from Section 2, 9.58.020 paragraph 'J'.

Pam Walzer concurred.

Ed Childers agreed with the proposed amendment.

Jon Wilkins described his feelings regarding the responsibilities of adults between the ages of 18 and 21.

Dave Strohmaier asked Jim Nugent about any ramifications of changing the age in the proposed ordinance from 21 to 18.

Jim Nugent responded that it would result in a sizeable exemption. He asked Pam to clarify her amendment.

Pam Walzer clarified that she would change the wording in section 'K', replacing the words 'underage' to read 'minor'. Minor would mean any person under the age of 18.

Jim Nugent pointed out that Montana State law defines under 21 as unlawful, and provided some background on the Federal mandate.

Pam Walzer clarified her position.

Dave Strohmaier asked if Pam for further clarification.

Pam clarified. She noted that the term 'minor' has two different definitions under Montana State law.

Dave Strohmaier concurred. Dave stated that if the word 'underage' is struck from the proposed ordinance, then the definition of the word 'underage' should be removed from the definition section.

Pam clarified.

Mark Muir opined that the word 'youth' could be used. He also noted that the discussion seems to be moving the proposed ordinance in the direction of the teen party ordinance rather than a social host ordinance.

Ed Childers asked Mark Muir to describe a situation where a social host ordinance would be applicable.

Mark Muir provided an example.

Ed Childers asked Mar Muir for his feedback on the proposed amendments.

Mark elaborated.

Ed Childers would like to leave the age in the proposed ordinance at 21.

Dave Strohmaier asked for Mark Muir for clarification in a situation where a 19 year old is serving alcohol to underage drinkers and what kind of accountability applies.

Mark Muir responded that the 19 year old can be charged under title 16 liquor laws.

Jon Wilkins would like to leave the age in the proposed ordinance at 21.

Lyn Hellegaard would like to leave the age in the proposed ordinance at 21.

Pam Walzer discussed the definitions of 'youth' and 'minor'. Pam clarified that her amendment would replace 'underage' with 'minor'.

Dave Strohmaier moved to vote on Pam's amendment.

The motion failed with Pam Walzer and Bob Jaffe voting for it.

Jason Weiner asked about the section that states the prosecution cannot be deferred.

Jim Nugent clarified and discussed deferred prosecution.

Paul Bowles commented. He feels that the main thrust of proposed ordinance is revenue enhancement for the City. He is concerned about the scope of cost recovery. He would like to see the cost recovery better defined.

Dave Strohmaier held the proposed ordinance in committee

#### **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 9:00 AM. Submitted by Gregg Schonbachler.