

PUBLIC SAFETY AND HEALTH COMMITTEE AGENDA
Wednesday, August 12, 2009 1:05 PM – 2:30 PMT
Council Chambers, 140 West Pine Street, Missoula, Montana

I. ADMINISTRATIVE BUSINESS

1. Approve minutes from [July 29, 2009](#).

II. PUBLIC COMMENT

None

III. CONSENT AGENDA ITEMS

1. 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)

Motion: The committee recommends the City Council to approve the acceptance of the COPS (Community Oriented Policing Services) Hiring Recovery Program (CHRP) award for \$1,092,230.

Mark Muir, Chief of Police stated the COPS (Community Oriented Policing Services) Hiring Recovery Program (CHRP) award was developed through the stimulus plan. The CHRP is a hiring and retention program for police officer positions that have been lost across the country due to lack of funding and cut backs.

The Missoula County Public Schools announced they can no longer afford to fund the community resource officer positions for years to come, and the City lacks funds for a drug diversion, drug diversion investigator and a parks officer. The Police Department requested enough funds from the grant to cover these seven positions.

Chief Muir stated he was not hopeful of being granted funds for those positions, because nationally one in eight of those positions are granted. The award was granted in the sum of \$1,092,230. This is enough money to employ five out of the seven positions for three years including all benefit accruals that occur during that period of time.

Chief Muir said there is a stipulation that is attached to the grant, and that is to continue these positions for one full fiscal year following the end of the third year. Year four, the City of Missoula will be obligated to fund these positions. He said there are concerns with the stipulation, but there is also an attrition rate of four and six officers per year.

Jason Weiner asked how closely the stipulation is tied to the job descriptions in the grant.

Chief Muir said the positions require officers to be involved in community policing activities. He said the police department applied for funding to replace the three positions that were lost when the street crimes unit was severed.

Jon Wilkins moved to approve the CHRP award.

The motion passed unanimously.

REGULAR AGENDA ITEM

2. 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)

Motion: The committee recommends the City Council adopt 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.

Motion: The committee recommends the City Council deny an emergency 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.

Keithi Worthington, Deputy City Attorney discussed the comments and concerns regarding the July 27 2009 City Council meeting. The issues allege the proposed ordinances are not constitutional and there were allegations restricting free speech. Ms. Worthington said she reviewed the articles and researched previous cases and followed up on previous Montana cases regarding these issues.

Ms. Worthington stated the ordinance does not limit free speech and allows panhandling. The aggressive nature behind the free speech and any type of conduct where there is a life safety issue involved is the issue that is being addressed. Based on that analysis there is not a constitutionality issue regarding free speech in any of the four ordinances.

She said the articles previously printed in the Missoulian were questioning whether the ordinances were criminalizing poverty. After researching the contents of the City's ordinances, they do not address criminalization. She stated there are high crime cities that have criminalization language in their ordinances due to their environments.

There was a misconception at the public hearing from the public. She noted other city ordinances support penalties for sitting or lying on sidewalks, but the Missoula ordinances does not include that language. The proposed pedestrian interference ordinance does not prohibit sitting or lying in public areas. The ordinance does prohibit obstructing pedestrians from passing by.

Ms. Worthington stated she proposed an amendment to the aggressive solicitation ordinance at the public hearing that addressed the exemption provision. The provision allows the City Council to temporarily suspend the requirements for charitable fund raising events. This provision should be removed and included in the special events permit ordinance.

Dave Strohmaier asked for suggested specific language to be included regarding 9.36.050 section "J" Exemption.

Ms. Worthington suggests the current language should be deleted and the proposed language should say "The validly obtained special events permit may provide as an exemption to the provisions of this section, the special event permit maybe obtained pursuant to Title 12, Chapter 58 of the Missoula Municipal Code". She noted the special event permit is required at any event and it defines the word event to cover any function that interferes with pedestrian passage on streets, sidewalks and parks.

Jon Wilkins asked if there is a fee for a special permit for street use.

Ms. Worthington said there is no fee for the permit but the applicant requires insurance to cover the municipal liability of \$750,000 per claimant and 1.5 million per occurrence.

Mr. Wilkins asked Chief Muir if the current ordinance addresses the aggressive panhandling problem in the downtown area.

Chief Muir stated the Police Department said this is the fairest way to address individuals whose conduct comes into question by other citizens as being aggressive or troublesome. It gives officers a legitimate reason to make contact with an individual for what previously was unrestricted conduct.

Mr. Wilkins moved to adopt the aggressive solicitation ordinance with the staff recommended amendment.

Jason Wiener stated in section 9.36.020 "C" Purposes, it states there has been an alarming increase in the number of persons aggressively soliciting. He noted he does not agree and he is not sure if it should be adopted as a purpose of the ordinance. He said he does agree with the other purposes that are factually correct.

Mr. Wiener moved to strike section 9.36.020 section "C".

Mr. Strohmaier clarified the motion to amend striking section "C".

Mr. Wilkins stated he feels there has been an increase of aggressive soliciting and asked Mr. Austin for input.

Rod Austin, Director of Operations for the Downtown Improvement District stated his organization keeps a record of contacts with panhandlers in the downtown

area. He said the contacts in June 2008 were 300 and in June 2009 there were 700. This information applies only for the month of June.

Mr. Wilkins suggested keeping section 9.36.020 section "C" in the ordinance.

John Hendrickson suggested striking the word "alarming" and keep all other language the same.

Mr. Wiener said section "C" gives the impression to empower people to behave aggressively against people who are panhandling or homeless. He said his proposed amendment stands and if it fails, we have the option to strike the word "alarming".

Mr. Hendrickson asked if Mr. Wiener were accepting his amendment as a friendly amendment.

Mr. Wiener said no he is not accepting the friendly amendment.

Mr. Hendrickson noted he does not support Mr. Wiener's motion.

Pam Walzer supports Mr. Wiener's concerns as there is more aggressive activities downtown than panhandling. She said it is a subculture in the downtown area, but not the only problem. If the problem is not excessive and not needed, she supports removing section "C".

Ed Childers asked if there were other reports regarding an increase of aggressive solicitation.

Chief Muir stated the Police Department is not specifically tracking the number of individuals who make reports, because it is not a criminal act. The police department relies on information from the officers who work in the downtown area and from the bicycle ambassadors. They all report they are witnessing more activity.

He mentioned the transient population is a seasonal issue, and every year starts low and grows throughout the summer and they decrease when the weather starts getting cold.

Mr. Childers stated there are people who are alarmed in some situations and if the motion fails he supports striking the word "alarming" from the ordinance.

Mr. Wilkins moved to call the question.

The motion to call the question passed unanimously.

The motion for the proposed amendment to strike section "C" failed on a voice vote.

Mr. Strohmaier asked for discussion on the main motion.

Mr. Childers moved to strike the word "alarming" in section "C".

The motion passed unanimously.

Mr. Strohmaier asked for discussion on the main motion.

Ms. Walzer asked for language modification for the definition "solicitation", because she has witnessed and heard complaints about aggressive petition signing. She said this concerns people who aggressively approached to sign petitions. She said she witnessed this activity at the Saturday market. She asked if petition signing is considered an aggressive activity.

Ms. Worthington said she has seen solicitation ordinances that are defined more broadly. She is concerned with defining the City's ordinance too much as it would interfere with political speech. She noted a sentence could be added to address petition signing.

Ms. Walzer supports adding a sentence to help control aggressive petition signing.

Jim Nugent, City Attorney reminded the committee, there has not been a public hearing to regulate petition signing.

Ms. Walzer said she will address the aggressive petition signing at a later date if this ordinance is passed.

Mr. Wiener moved to strike the word "harassment" from the ordinance, which is included in sections 9.36.020 "C", "D", "E", "F" and 9.36.030 "B".

He mentioned "intimidation" and "threats" are a public safety and health concern and harassment is something different.

Ms. Worthington said she didn't think removing the word "harassment" would affect this ordinance.

Mr. Strohmaier clarified the motion is to strike the word "harass" in the definition section of the ordinance.

Chief Muir recognizes the concern, but the word "harassment" is based upon the individual receiving it. He said for an example, a 12 year old girl may have a significant outlook than a 47 year old woman who is trained to protect herself. He suggests leaving it in the ordinance.

Mr. Wilkins agrees with Chief Muir and suggests leaving the ordinance the way it states.

Mr. Wilkins moved to call the question.

Mr. Strohmaier clarified the new motion to strike the word "harass" from the ordinance.

Carol Bellen stated she supports the amendment to strike the word "harass" from the ordinance. She stated she is confused and trying to understand this process and she would like to make a public comment when she is allowed too.

Mr. Strohmaier clarified the main motion is still on the floor to adopt the ordinance, and currently the committee is in the process of making proposed amendments.

Mr. Childers asked what the amendment states.

Mr. Wiener clarified the amendment removes the word "harass" from the purpose and definition sections.

The motion to call for the question passed.

The motion to strike the word "harass" from the ordinance failed.

Mr. Strohmaier asked for public comment to adopt the ordinance.

Ms. Bellen stated she apologizes for not doing more research, and has been trying to follow discussions relating to the four ordinances. She said she does not support the ordinance, but she does support the working groups who are involved with the stated issues. She said she is concerned with the \$100.00 penalty imposed and is opposed to prohibiting people from sitting and lying on the sidewalks. She said there are far too many opportunities for discrimination in how this ordinance will be applied to be effective.

Ms. Bellen noted she has spent most of her adult career working with low income families through organizations such as WORD and neighborhood housing services. She said she frequents the downtown area often, and she does not feel this merits an emergency ordinance.

She reminds the committee that 10% of Montanans are receiving food stamps and many more who are hungry. She said there are a lot of hungry people who walk by restaurants that provide outside dining. There is not 6 ft. of clearance for hungry people to walk by these places. There are stores with their going out of business signs, with people standing on corners soliciting. She said everyone has difficulties and many businesses downtown solicit useless and expensive things and it annoys me. There are many sides to this issue and encourages the City to be more involved with an effective solution. She encourages an additional public hearing because there are a lot of people who would like to talk about this and were not able to attend today's meeting.

Mr. Wilkins asked Ms. Bellen if she was saying; eliminate all panhandling, sitting and lying on the sidewalks. He asked her if she realizes and understands the committee is addressing the concerns regarding the aggressive part of the ordinance.

Ms. Bellen said the elaborate map of zones where it is allowed and disallowed should not be in this ordinance.

Mr. Wilkins clarified it is the aggressive part of the ordinance that is being discussed.

Ms. Bellen said there are disorderly conduct laws that address this and those laws that are on the books can address the problem. All elements that are being amended in the ordinance will not be effective and will be discriminatory.

Mr. Strohmaier stated he has been active with the panhandling working group over the past year. There have been citizen responses and concerns regarding behavior, and constitutional issues. He said he supports the ordinance regarding behavioral issues in the downtown Missoula, and noted this is not going to solve broader issues of poverty, but it will help with behavioral issues.

Ms. Walzer asked if a person standing on the sidewalk soliciting a service for their business or soliciting a business that is going out of business is legal, and if it is a state law.

Chief Muir responded yes, it is a state law and they are legal because it coincides with the sign ordinance, but they are not allowed to stand on the roadway.

The motion to adopt the ordinance with amendments passed.

Ms. Walzer asked if the ordinance that was just approved and if passed at City Council will go into effect in 30 days. She stated it is now August and the need for the emergency nature is gone. She does not support the emergency ordinance.

Mr. Wilkins asked Chief Muir for his opinion.

Chief Muir stated this year has been as bad as it ever has been. He said the activity will continue from certain age groups, particularly people who live the transient life style moving from town to town.

He said there has been a lot of discussion about education. He said one idea is if the council would support the emergency ordinance so police could make legitimate contact with the individuals. This would give the officers a chance to help educate individuals with a verbal warning for the first 30 days before the ordinance is in effect. He noted this is a suggestion.

Mr. Wilkins moved to approve the emergency ordinance and include Chief Muir's recommendation to allow police make legitimate contact for the first 30 days to help educate individuals without penalties.

Mr. Wilkins moved to call the question.

The motion to call for the question passed.

Mr. Childers clarified the emergency ordinance allows the word "alarming" and the other ordinance does not. He noted this is not a good idea and they should be consistent.

The motion failed with Mitchell, Hellegaard, Wilkins, Hendrickson, Weiner, Strohmaier voting Aye and Childers and Walzer opposing and Weiner abstaining.

Mr. Wilkins moved to modify the motion.

Mr. Nugent clarified the laws of modifying the motion.

Mr. Childers stated Mr. Nugent you are not helping to make this process happen. We do have a process called reconsideration and we can do that, but we passed a main motion and that is the motion we are dealing with. He said Mr. Nugent is suggesting the City Council pass a main motion and take up the same idea and pass another main motion and conceivably do the same thing over and it does not make any sense.

Mr. Nugent clarified the emergency ordinance has not passed because there is not a full body and it takes 2/3 vote of the council and there is not 2/3 vote at this time.

Mr. Strohmaier said his preference is to send the ordinance that was just voted on to the floor and make amendments on Monday night.

Renee Mitchell suggested making all amendments now and then send it to the floor for Monday night.

Mr. Strohmaier said he will include that in his motion for Monday night.

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)

Mr. Strohmaier suggested discussing the pedestrian interference ordinance.

Ms. Walzer clarified that the ordinance does not prohibit people from sitting on the sidewalk and she said she is not sure about lying down. She said she would rather see people lying on a warm sidewalk than in a damp park. She does not like the idea of people lying in the allies where there is a potential of being run over by a vehicle.

The meeting adjourned at 2:30 pm

IV. 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. Presentation on drug disposal event ([memo](#)).—Regular Agenda (Renee Mitchell) (Referred to committee: 08/03/09)
11. Confirmation of Police Officer Melissa Sparling ([memo](#)).—Regular Agenda (Mark Muir) (Referred to committee: 08/10/09)

Respectfully submitted,

Kelly Elam

Kelly Elam
City Clerk Office