

PUBLIC SAFETY AND HEALTH COMMITTEE REPORT
Wednesday, September 2, 2009 8:30 AM – 9:30 AM
Council Chambers, 140 West Pine Street, Missoula, Montana

Members Present: Ed Childers, Dick Haines, Lynn Hellegaard, John Hendrickson, Bob Jaffe, Renee Mitchell, Dave Strohmaier, Pam Walzer, Jason Wiener, Jon Wilkins

Members Not Present:

Other Present: Mark Muir, Chris Odlin, Keithi Worthington, Jim Nugent, Rod Austin, Ginny Miriam

I. ADMINISTRATIVE BUSINESS

1. Approve minutes from [July 29, 2009](#) and [August 26, 2009](#). Minutes approved unanimously.

II. PUBLIC & STAFF COMMENT

III. CONSENT AGENDA ITEMS

IV. REGULAR AGENDA ITEM

1. 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**

Dave Strohmaier stated there is a motion on the floor to adopt the ordinance. Bob Jaffe pointed out Section 9.34.040 paragraph C is an incomplete sentence and needs to be clarified. Everything else is struck out.

Keithi Worthington the entire C is supposed to be struck out. You see there are two C's and then D, that is the proposed language, " it is unlawful for any person on a public bridge, sidewalk, walkway, park or any other publicly held or owned land to purposely or knowingly force oneself upon the company of another as defined herein.

Dave Strohmaier O.K. so that's the new C.

Keithi Worthington that is the new C and that currently is in the ordinance.

Bob Jaffe I have a few. First: The new C, which is the knowingly force oneself upon the company of another section, seems to make reference back to a definition of force oneself upon another which is stricken. Is that intended or what was the thought behind that?

Keithi Worthington the force oneself upon another was replaced by harass or intimidate. The reason that we did that, we put in the definitions of harass or intimidate because there were concerns with forcing oneself upon the company of another that could be construed more as a personal assault and there were some of those concerns with this language that there were provisions that seemed to appear to be covered by a robbery or an assault with a weapon or an assault charge.

Bob Jaffe so should we change that in C so it doesn't reference that language anymore? Or just change it to harass or

Keithi Worthington purposely or knowingly harass or intimidate and I will go back and check through my records. I thought that the most recent draft had that language.

Bob Jaffe so that would be my first amendment inaudible

Dave Strohmaier are you offering that as an amendment Bob?

Bob Jaffe might as well if it isn't adopted already. So, force oneself upon the company of another gets replaced with harass or intimidate.

Dave Strohmaier OK we have a motion to amend on the floor. Any comment, discussion on the motion? Any public comment on the motion to amend? OK seeing none, let's go ahead and vote on this. Are we all clear on what Bob is? Bob could you restate your motion?

Bob Jaffe in Section 3C, it would read it is unlawful for any person on a public bridge, sidewalk, walkway, park or any other publicly held or owned land to purposely or knowingly harass or intimidate as defined herein.

Dave Strohmaier and the reason for that is we've stricken the language in the definitions about forcing oneself so it's to make it consistent. Clear now? OK, let's go ahead and vote. All those in favor say Aye, Opposed? OK, that carries. Bob?

Bob Jaffe then in the definition section there are few definitions that don't appear to be used in the actionable part of the document you know, they are in some of the whereases' but there not in any of the therefore. So you got accost is one of them so now we've just added harass and intimidate, those weren't. Let's see, the knowingly is now used. And the word weapon as well, I don't know if we need that, so that's accost and weapon I guess are the two definitions that don't appear in the prohibited conduct sections.

Dave Strohmaier Keithi or Mark would you like to come up and address that and given what Bob has described is there any reason to retain those definitions in the ordinance?

Keithi Worthington some of that language was used in the Purpose Section. Weapon is still in the Purpose Section, because it is currently on the books we went through a lot of proposed changes between the committee and then the police department and our office. Accost certainly could be removed, I don't think I see that in the Purpose Section. But weapon is in the Purpose Section, so even though it's not in the ordinance, there was concern about whether that should be removed or not.

Bob Jaffe it kind of touches on another issue I have with this. There are a lot of things in the Purpose Section which the ordinance doesn't appear to address. Like, basically, the Purpose Section seems to be describing the Aggressive Solicitation Ordinance more, or in general the other behaviors, like fear of being attacked by people with weapons. It just seems outside the scope of pedestrian interference so there is a little bit of disconnect there that I think there may be some intent to have these two unified ordinances but it's kind of confusing.

Dave Strohmaier one suggestion I would make Bob, would be maybe we should address your concerns with the Purpose Section and if there are terms that then drop out we can

Bob Jaffe J alright that's fine and I have some proposed amendments

Dave Strohmaier Ok, Keithi.

Keithi Worthington if you look at the Purpose Section, paragraph A and B were underlined, those were added, there is some underlined language, very little is stricken out, this was the Purpose Section that is currently on the books that was used when the first Pedestrian Interference Ordinance was passed and when we talked about it, we didn't change any of that language because it was the Purpose for the original Pedestrian Interference and since we are just amending the ordinance I didn't a lot of proposed changes to the Purpose and that's why you see some of that language.

Bob Jaffe I was wanting to propose that we strike Sections A, B and C in the Purposes portion of the document. Section A I just don't really see what that's saying, you know what that means. We want to make it so everybody can get along, I don't think that's necessary basically because I don't think necessary; B we want to encourage courteous behavior,

again, I'm not sure why that rubs me wrong, the idea that of having these in here. The third three, the D, E and F seem to actually talk to why we want this ordinance. The first three seems to be some kind of apologetic to justify us, it just doesn't seem necessary. Then C is the part I'm really unclear about is whether or not we're talking about the behaviors that are already prohibited. You're not allowed to attack people, and it seems to be talking about that there again. Not just obstructing, it seems to be getting into carrying weapons and aggressive behavior and so on. I don't think it fits here. I don't know if that has traction or not but I'd like to move to strike A, B and C.

Dave Strohmaier A, B and C to be stricken is Bob's motion, discussion on the motion? Ed.

Ed Childers how about we separate them into A – B and C and then I would speak to A quickly, I'm not against trying to find solutions I think Bob has a point about the make it easier to remain in public places peacefully and stuff and I think I like the less conflict portion and I think the passage part could promote less conflict so I would probably try the City deems it necessary to find solutions which make it easier for the City's diverse residents and visitors to share public areas with less conflict. Strike the intervening portion as a substitute motion or a

Bob Jaffe I would accept it as a friendly amendment

Ed Childers friendly amendment to A.

Dave Strohmaier OK, the motion is friendly amended. Additional discussion on the motion? Yes, Lynn.

Lyn Hellegaard inaudible

Ed Childers OK, let me try again. This is A, the City deems it necessary to find solutions and you can delete everything from find solutions to the second line where it says to make it easier for the City's diverse residents so find solutions to make it easier for the City's diverse residents and visitors to share public areas with less conflict.

Dave Strohmaier OK, additional discussion.

Jason Wiener question, so did we divide the motion so we can consider A, B and C separately and we are voting on amended A?

Dave Strohmaier yes it's been divided. Any public comment on the motion to amend Paragraph A? Additional discussion?

Dick Haines I guess the concern I have is whether you need with less conflict inaudible that looks somewhat like there might be some, I wouldn't call it redundant, but it seems a bit awkward to me. The City deems necessary to find solutions which make it easier for the City's diverse residents and visitors to share public areas. I would ask for a friendly amendment there or

Bob Jaffe sure

Dave Strohmaier OK that will be included as a friendly amendment, strike with less conflict. OK, vote? All those in favor of the motion to amend paragraph A, Aye? Opposed? Approved unanimously.

Dave Strohmaier Paragraph B, discussion on the motion to delete paragraph B?

Bob Jaffe the reason I don't like it is it seems to be getting back to that thing that somehow this is supposed to be helping the homeless people in town. We're encourage inaudible to promote greater tolerance and civility, I don't know there's something, maybe even just the word tolerance, I just don't see how that's what this is about at all.

John Hendrickson I would just like to know is that Paragraph B is there for any legal reason or to suppose the document and the ordinance.

Keithi Worthington when we were doing this, the inaudible working group really wanted to look at a balance, the remaining paragraphs really talked about all the problems that were occurring but we wanted to frankly try and strike a more positive tone that we are trying to find a balance between all the people. The concerns about the pedestrian interference don't just relate just to the homeless, you have a variety of people that use the streets; musicians, shoppers, people congregating. The intent was to try and strike a positive tone for the purpose behind what we are doing. There isn't any specific reason the committee wanted to try and add more positive reasons for this ordinance.

John Hendrickson so you would suggest then leaving it in there to

Keithi Worthington I think in the group's opinion, it added important reasons for the Purpose Section and that is why it was added.

Ed Childers I like all that stuff. There is an important piece of that and that's the definition of unacceptable behaviors. I think defining unacceptable behaviors leads toward more courteous behavior and such I think we could leave it in.

Jon W I'm in favor of leaving it in there. To make it short and sweet, we all need to learn a little more tolerance.

Dick Haines I think B is almost redundant if you got A in there.

Dave Strohmaier any public comment on Bob's motion to amend, deleting Paragraph B? Voice vote? Motion fails.

Bob Jaffe on C, the alarming increase in the number of persons interfering with, does that need to be defended? Do we have data? It just seems to introduce something that I don't think it should be in there.

Dave Strohmaier and I would say Bob, in the Aggressive Solicitation Ordinance; we did delete the word alarming. That might not mitigate all your concerns there.

Mark Muir this is language from the pre-existing ordinance and the word alarming was removed from the Solicitation. All that's been added in here is with regard to the types of reports that we are receiving from individuals giving a little more clarification and having it actually fit in with the harassment and intimidation portion of that.

Ed Childers I'd include language siting the source of the increase in such conduct in weapons. I believe the BID kept track of that or MDA? We had testimony from someone uptown to that effect that as far as the Police Department I guess that's just kind of a failing that you guys have and I put some stock by that too.

Jon Wilkins I'd like to leave it in too. The alarming can go, we did that in the other one. The purpose kind of said that it's been increasing in the last few years, that is our purpose why we are doing this and this is why we didn't react before until the last few years. I put that amendment into it, but I don't want the whole thing deleted.

Dave Strohmaier OK are you offering a substitute motion to leave it in and just strike the word alarming.

Jon Wilkins that I am, striking the word alarming.

Dave Strohmaier Alright, we have a substitute motion on the floor.

Dick Haines it needs to be clarified what you're talking about; the persons interfering or the persons being interfered with carrying the weapons. That isn't clear; the English needs to be revised there. That could be done later one, I have no problem with that.

Ed Childers If there has been an increase, we should have some reasonable documentation for that, may we ask the BID folks to come up and see if they have that.

Rod Austin the data that we were talking about before was a comparison from last year's numbers to this year's numbers. We defined one of the definitions as the people that we've gotten calls to have people move because they are either on private property or are causing problems. The other one is panhandlers just spotting or seeing people that are panhandling, whether they're within the new ordinance or not, I don't think we've measured that although we are keeping track of the data prior to that ordinance and subsequent to it.

Ed Childers could we get a copy of that to put in our records then I would suggest that an amendment to the substitute motion which would start this out records kept by the Business Improvement District show there has been a significant increase and go on from there.

Dave Strohmaier Jon will you accept that.

Jon Wilkins yes.

Bob Jaffe I think the issue is, like Mark brought up, this was from the original ordinance. So at some point in time it was felt there was this alarming increase in this, this ordinance was created originally. To keep that in there, sort of as a running statement of affairs just doesn't seem right. I believe what it is trying to accomplish is accomplished in the next paragraph. Where we acknowledge that the Police Department and City Officer's have received complaints from citizens about these things. It is already covered by why we need an ordinance by D.

Rod Austin the numbers do vary. From '07 to '08, the number of people moved that we kept track of actually decreased so it might be an anomaly, just being one year it hard to tell. I think the data is pretty good data from '07 on, prior to that we didn't keep them and it's still early.

Dave Strohmaier we have a motion on the floor to amend Paragraph C, striking the word alarming and adding in Ed's proposed language related to the BID documentation. Any public comment on the amendment? Vote? 9 in favor, 1 opposed. Motion carries.

Dave Strohmaier I think we are going to have to schedule a little more time.

Ed Childers I do have a number of amendments that might be helpful. Those of you who remember Scott Morgan would wish he'd put his services into this but for instance, you don't define purposely as acts purposely; you don't want to do that. And that's just one of the things; you don't define knowingly as acts knowingly. So there are a number of changes that really need to be made before we pass or don't pass this ordinance so I would like to wait.

Pam Walzer we've talked about the discussion of changing whether or not six feet is the right number for clear right of way for pedestrian passage because not all city streets are 12 feet wide and I don't know the language I want to suggest whether it's like 50% of the available right of way is what I'd rather have there versus six feet. We talked about limiting it to just downtown but again still only 50% because not all sidewalks in the downtown area are vehicle sized.

Dave Strohmaier I think that is a good place to begin discussion maybe we could open up with that next time.

Jon Wilkins I have one I would like you to think about. It's in Violations and Penalties, a person convicted of a violation of this chapter shall be guilty of a misdemeanor and shall be

fined not to exceed \$100.00. I'd like you to think about adding our Authorized Community Service.

Dave Strohmaier Meeting adjourned.

2. Police Department Update – Ongoing in Committee (Mark Muir) **HELD IN COMMITTEE**

Mark Muir gave an update about several topics for the Police Department.

1. For the first time since January 2008, we have a full roster. On Monday, five officers were sworn in, bringing the head count to 103 officers. Unfortunately, within the next two weeks, we are losing two officers. We currently have 16 members of the department that not performing their normally assigned positions. Those 16 positions are the result of military deployment, injuries and trainees.
2. Our recruiting process continues almost on an almost perpetual basis. We have one of the best recruiting processes in the state of Montana.
3. We have four officers that are off with significant injuries. Earlier this year we engaged in a program with MMIA to begin to research what some of the main risks are that we can try to avoid. We are participating in the Risk Avoidance Program. The seriousness of the injuries in 2009 has gone due and we believe that in part it is due to our participation in the Risk Avoidance Program and our communication to our officers about safety practices.
4. We are in the process of doing our Briefing Room remodel and are anticipating another 40 days before we will be able to occupy it.
5. Policing Priority:
 1. Prescription drug abuse
 2. DUI's
 3. Underage drinking
 4. Child exploitation
 5. Youth violence and gangs
 6. Drug trafficking
 7. Traffic enforcement
 8. Quality of Life issues
6. We have received 1.6 million dollars in grant funding from State and Federal sources. We have an additional \$750,000 to jumpstart a new building project.
7. The Calls For Service is down for this year. The Crime Rate has remained fairly stable. Traffic citations are down 27% for this year. The criminal arrest rate is up 12%. [Arrest Report 2009](#)
8. [West Broadway Crashes 2009](#)
9. The Internet Crimes Against Children is up and running.

Ed Childers asked if there has been tracking done for texting or cell phone use.

Mark Muir stated that there has not been an accident related to texting nor have we issued a citation for texting.

V. HELD AND ON-GOING AGENDA ITEMS

1. Health Department Update – Ongoing in Committee (Ellen Leahy)
2. 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)
3. Update on the Police facility project. ([memo](#)) – Regular Agenda (Mark Muir)(Referred to committee: 05/12/08)
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. Discussion on the MRL herbicide program within the city limits ([memo](#)).—Regular Agenda (Bob Jaffe)
7. 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)
8. 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)
9. Discuss measures to prohibit bicycle riding on sidewalks in downtown Missoula ([memo](#)).—Regular Agenda (Dave Strohmaier) (Referred to committee: 07/27/09)
10. 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)
11. 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)

V. ADJOURNMENT

The meeting adjourned at 9:30 AM. Submitted by Leslie Willis.