

PUBLIC SAFETY AND HEALTH COMMITTEE REPORT
Wednesday, September 30, 2009 8:00 AM – 9:00 AM
Council Chambers, 140 West Pine Street, Missoula, Montana

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

Members Not Present: Lynn Hellegaard, John Hendrickson,

Others Present: Mark Muir, Rob Scheben, Mike Painter, Keithi Worthington, Jim Nugent

I. ADMINISTRATIVE BUSINESS

1. Approve minutes from [September 23, 2009](#). Minutes approved unanimously.

II. PUBLIC COMMENT

III. CONSENT AGENDA ITEMS

1. Confirmation of Firefighters Ahren Cornelius, Aslan Summerday, Joseph Waggett, Bradley Davis, Jason Chesbro & Ryan Murer ([memo](#)).—Regular Agenda (Mike Painter) (Referred to committee: 09/21/09) **REMOVE FROM AGENDA**

Motion: The committee recommends the City Council confirm the Mayor's appointment of Ahred Cornelius, Aslan Summerday, Joseph Waggett, Bradley Davis, Jason Chesbro and Ryan Murer as firefighters for the city of Missoula.

Mike Painter asked the committee to ask the Mayor to confirm these firefighters. They have successfully completed their one year probation and asked the committee to consider recommending their confirmation.

Jason Wiener made the motion to move the appointment to the council floor. Motion passed unanimously.

IV. REGULAR AGENDA ITEM

2. 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](#)) ([Updated Ordinance 09/02/09](#)) ([09-30-09 Pedestrian Interference Ordinance](#)) ([PS&H](#)) (Referred to committee: 07/27/2009) **REMOVE FROM AGENDA**

Motion: The committee recommends the City Council adopt an ordinance and an emergency ordinance of the Missoula City Council 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.

Bob Jaffe: two amendments I'd like to make, [inaudible] change the number of feet from the entrance to a business, I'd like to change it to 12 feet from either side of the entrance way and apply it only to business hours.

Mark Muir I know the efforts of the working group have been to try to focus on something that could apply legally as more of a blanket issue within the downtown realm but also utilized across the board in terms of other portions of the community as well. I expect you will hear some concern from other folks on the possibility of amending this. Particularly I would speak to the fact that within doorways and within those confines, we presently could use the Disorderly Conduct statute during open business hours. This would help by expanding it out some distance from there. One thing I would caution you, we have found to be difficult about the business hours aspect of this; we haven't been able to apply disorderly conduct to people sleeping in the doorways of businesses during closed hours because it wasn't actually

blocking ingress or egress unless a business owner came by later in the night and was trying to get in or out of their business. It is a regular and frequent concern brought to our attention is that the same foyers are being utilized not only as bedrooms but as bathrooms and eating areas and that there is a tremendous amount of trash and defecation and urination and things that occur in those entryways. The business owners are unfortunately regularly faced preceding their opening hours and following their opening hours with a tremendous amount of sanitization and cleaning as a result of allowing that conduct.

Rod Austin I think some of the things the Chief is talking about that happen in those doorways are a result of the areas becoming bedrooms and places for that people congregate and hang out at. And if they're not there, that problem is not going to exist. There are a lot of people that are in this room today that have a hard time getting to their business on time, running kids to school, errands, trying to get their store open, in addition to having to stumble over people who are sleeping there and the stuff they leave behind. It's a tremendous burden on businesses to have this going on a daily basis, year round. The sidewalk is not a place for people to sleep. It is not safe from the weather, predators. It does impact the downtown businesses. We support the Chief for keeping the ordinance the way it is. I would say that I believe there are a lot of people in the audience today that would support that. It provides a tool for the police department. We can't allow the businesses to bear the brunt of what we allow socially and culturally. I would ask those folks who support a stronger ordinance to stand up. One of the things we have worked on the last couple years is creating a place where everybody feels secure and safe and a clean place. I want to find folks a clean, decent place to sleep at night but it is not on the sidewalks.

Bob Jaffe inaudible with 12 feet and the issue of during business hours isn't a deal breaker for me so I can take that out.

Marilyn Marler stated that public defecation and urination are already illegal and I think we need to make sure with the audience that we are talking about these specific amendments to this specific ordinance, which has to do with obstruction of sidewalks.

Jon Wilkins I'm not going to support the amendment. We have a problem in Missoula. If I used an area 12 feet from an entryway as a bedroom, it's my bedroom; then I'm trespassing on the public's right of way.

Pam Walzer I've been reading an email that went out last night that most likely the people in the audience don't have that and I find it really compelling, the 9th Circuit Court, and we're under the 9th Circuit Court, they had although there was eventually some settling apparently so it's not necessarily precedence but they held that being essentially it's unconstitutional to punish someone for being homeless because they have no place to go, they are involuntarily sitting, lying or sleeping on a public sidewalk as unavoidable consequence of being human and homeless without shelter in the city of Los Angeles. I am concerned if we pass this, we are saying the exact same thing that we think that it is OK to allow to punish people for being homeless. I sympathize completely – I don't want somebody sleeping on my front lawn, I don't want to have to stumble across people sleeping in downtown on the sidewalk.

Keithi Worthington the prohibition in Los Angeles that the Jones case addresses, which is a case that was later vacated, prohibited anyone from sitting, lying or sleeping on any street, sidewalk or other public way. What the court found was that was the broadest prohibition and they found that it was directed solely towards the homeless people.

Ed Childers so do we have some other place for these people to be?

Bob Jaffe I believe the courthouse lawn is the only legal place they can be.

Jon Wilkins we have places for them if they follow the rules, if they don't follow the rules – they are not allowed there. They have to follow the rules. In the ordinance, it doesn't point out any section of society, it's not pointing directly at the homeless.

Jim Nugent it's not so much about interpretation, it's about application.

Dick Haines inaudible we are becoming the enablers for this behavior.

Several people gave their opinions and reasoning for the need for a more restrictive ordinance. Several urged the committee for stronger language to give the police department the tools needed to correct these actions and socially unaccepted behaviors.

Jason Wiener called the question on the amendment.

Dave Strohmaier asked for the vote on calling the question on the amendment. 3 opposed, 5 in favor. Motion carries.

Renee Mitchell asked for the amendment to be re-stated.

Bob Jaffe Motion is to revise the text of inaudible to read it is unlawful for any person to lie or sleep within 12 feet of an entrance to a building or upon any street or ally within the city limits. The current text reads it is unlawful for any person to lie or sleep on any street or ally within the city limits.

Dave Strohmaier asked for the vote on the motion to amend. 3 opposed, 5 in favor. Motion carries.

Jason Wiener inaudible amendment to clarify what constitutes a clear right of way passage. So this would be a modification to 9.34.04.B, which currently reads it is unlawful for any person walk, stand or sit or place an object in such a manner which obstructs or hinders passage of pedestrians on any street, crosswalk, sidewalk or other public right of way by leaving less than six feet of clear right of way for passage on sidewalks within the central business district and no less than 50% of the sidewalks inaudible clear right of way for pedestrian passage in other locations within the city limits. This amendment just clarifies it is six feet downtown and 50% outside of downtown.

Pam Walzer we're taking existing ordinance and the original draft the people are looking at that we are now amending as actually added language in this to try to clarify that the existing ordinance does not have the clarification of being unlawful to walk or stand or sit, is that right? I mean to block, it's not the existing and so we by even added the previous the past, we are adding language to this ordinance that is making providing prohibitions against inappropriate behavior, we're just trying to define that inappropriate behavior in some way and we're modifying that so

Dave Strohmaier OK and we're talking right now about Jason's motion to amend which is it's retaining language of requiring at least six feet of clear passage on sidewalks within and specifying within the central business district and outside of the central business district, anywhere else in Missoula, you've got to leave at least 50% of the sidewalk right of way free for pedestrian passage.

Bob Jaffe I think it's important to leave that language in their about six continuous feet. I think and it's kind of an important part to me that the six feet meaning the guy sprawls on the center of the sidewalk with three feet on either side of him isn't appropriate, six contiguous feet.

Dave Strohmaier let's take some public comment on the motion to amend, and this is essentially six contiguous feet of free passage within the central business district, 50% on other public right of ways, sidewalks in town

Mark Muir I would thank the council for accepting this suggestion. When this question came up, what about sidewalks that aren't a certain size, this was originally one of the things I suggested we look at as some way to say OK, at least half the sidewalk so I think this

language serves that purpose. I agree with Mr. Jaffe that the addition of the contiguous is certainly a good addition to make certain we are meeting our true objective.

Rod Austin I think most businesses think this is a reasonable approach, there is a difference between downtown and a sidewalk in front of my house.

Ed Childers I think there may be sidewalks in the central business district that are narrower than 12 feet. And there may some as narrow as six or eight feet. I suggest rather than talking about central business district, we talk about sidewalks that are 12 feet or wider and on sidewalks that are less than 12 feet, do the 50% thing.

Jason Wiener I'd accept that, I think it's inaudible conceivable that where we'll have wide sidewalks in other portions of town, so the amendment would be, six feet of clear contiguous right of way for pedestrian passage on sidewalks 12 feet or wider and 50% on sidewalks that are narrower.

Marilyn Marler so for clarification, if there is a six foot sidewalk then someone only has to leave three feet of passage?

Ed Childers that is how this 50% is worded, yes.

Marilyn Marler three feet is not enough, if somebody can't hang out somewhere without leaving six feet of sidewalk, they shouldn't be able to hang out there.

Dave Strohmaier and there are plenty of sidewalks in town that are only five feet so that is part of the issue.

Dave Strohmaier Vote on the motion to amend. in favor 5, opposed 1, motion passes. We are back to the main motion.

Ed Childers did we already do your first offered amendment?

Dave Strohmaier we have not done that, what I had proposed is simply we add the word downtown in front of business improvement district to be more specific.

Ed Childers why don't I make that motion then we can inaudible

Dave Strohmaier so the motion to amend is to make 9.34.020C records kept by the downtown business improvement district rather than just business improvement district. Public comment on that motion. Vote, OK, that carries.

Matt Ellis stated there is retaliation if the police are called for help.

Drue Kerns stated that she has encountered several people that will not come downtown because they feel uncomfortable.

Jon Wilkins question wasn't called on the main ordinance, was it? I don't think we are giving the police the correct tools to solve the problem, what we're doing is making another space on their utility belt where they are going to have to carry a tape measure now. I think you've heard from all these business people that the police need some teeth to solve the problem that is going on downtown and I think the way these amendments went on this ordinance, is not giving them the teeth to solve the problem downtown. I can't go along with this ordinance if it's not providing that.

Dave Strohmaier let's go ahead and vote, all those in favor of the ordinance as amended, please raise your hand. In favor 5, opposed 3, motion carries and it goes into committee reports for Monday night if folks want to come out and talk to us a little bit more about suggested changes or their thoughts on the ordinance, please come to the Monday night council meeting, 7PM.

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 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. 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](#)) ([Updated Ordinance 09/02/09](#)) ([PS&H](#)) (Referred to committee: 07/27/2009)
10. Remove extraterritorial jurisdiction of the garbage ordinance ([memo](#)).—Regular Agenda (Pam Walzer)
11. Consider an ordinance of the Missoula City Council amending Missoula Municipal Code Title 10 entitled Vehicles and Traffic, Chapter 42 entitled Bicycles for the purpose of changing the requirements for complying with traffic control devices and removing conflicting registration requirements by amending Sections 10.42.030 and 10.42.040. ([memo](#)).—Regular Agenda (Pam Walzer)

V. ADJOURNMENT

The meeting adjourned at 9:10 AM. Submitted by Leslie Willis.