

**PUBLIC SAFETY AND HEALTH COMMITTEE REPORT**  
**Wednesday, May 13, 2009 9:00 AM – 10:00 AM**  
**Council Chambers, 140 West Pine Street, Missoula, Montana**

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

**Members Not Present:** Lynn Hellegaard,

**Other Present:** Mark Muir, Mike Brady, Jim Nugent, Gary Bakke

## **I. ADMINISTRATIVE BUSINESS**

1. Approve minutes from [April 29, 2009](#). Minutes approved unanimously.

## **II. PUBLIC COMMENT**

## **III. CONSENT AGENDA ITEMS**

2. Review Edward Byrne Memorial Justice Assistance Grant application ([memo](#)).—Regular Agenda (Mark Muir) (Referred to committee: 05/04/09) **REMOVE FROM AGENDA**

**MOTION:** The committee recommends the City Council approve and authorize the Mayor to sign a memorandum of understanding with Missoula County and to submit an application for the Edward Byrne Memorial Justice Assistance Grant funds totaling approximately \$147,269 for the Police department and to schedule a public hearing on the grant application for June 1, 2009.

Mike Brady reviewed the [Referral](#) and the [Memorandum of Understanding](#) for this grant.

Jon Wilkins made the motion to set the public hearing for June 1, 2009.

Bob Jaffe asked for more information about the bar coding system, the electronic ticketing and the taser program for hardware and/or training.

Mike Brady stated the funds will be used for maintaining the program that is currently in place. He stated that the officers are trained to the Department's Taser Policy. Part of the funds will go toward the training cartridges as well.

The bar coding system is new to the department. Currently the evidence is tracked by hand. The bar coding system allows for the item, when it comes into the department, to be bar coded, entered into the system and then it can be tracked. It helps with the inventory, recognizes evidence that is authorized to be destroyed or returned. The price is for the software, hardware and supplies.

The electronic ticketing system allows for the information to be entered into a computer, there is an automatic download to the court system. One goal is to make the information more reliable, more convenient. The Highway Patrol has been using this system and we are looking at the system that is already accepted by the courts and the state.

Mark Muir stated that they are looking into the possibility of electronic storage versus the physical storage.

Dave Strohmaier asked how the amount of the funding is determined.

Mark Muir stated the amount of this grant is substantially larger than in the past. These amounts are determined by comparing crime rates within a certain geographical area.

Dave Strohmaier called for the vote. Motion to set a public hearing passed unanimously.

#### IV. REGULAR AGENDA ITEM

1. [Ordinance](#) amending Title 10 entitled "Vehicles and Traffic" Chapter 10.20 entitled "Operation of Vehicles" by adopting and establishing new sections 10.20.300, 10.20.310 and 10.20.320 generally prohibiting the use of hand-held mobile telephones and other electronic communication devices while simultaneously operating a motor vehicle or a bicycle. ([memo](#)) ([PS&H](#)) (Returned from Council floor: 4/13/09) **HELD IN COMMITTEE**

Ed Childers asked what makes the emergency personnel better drivers while they are on a cell phone than other people. He asked if there is data that indicates that emergency service providers are better equipped to use a cell phone while driving than other folks.

Dave Strohmaier stated the risk involved is outweighed by the benefit of needing to use the cell phone. There is also an argument about the amount of defensive driving training that emergency service providers receive.

Mark Muir stated the training the officers go through training in vehicle operations that go well beyond a typical driver's education program. This training is constantly being reinforced as well as the officer being forced to learn to multi task constantly. He stated that he is not aware of any specific data that indicates that an emergency service provider is better equipped to use a cell phone while driving than others.

Ed Childers asked why the ordinance allows for hands free use of a cell phone.

Dave Strohmaier stated that studies indicate there is little difference in the accident rate of hands free use as compared to hand held devices.

Mark Muir stated the enforcement of restricting ALL use of cell phones while driving would be virtually impossible.

Jon Wilkins asked if there isn't ways already on the books to address the bad driving; reckless or careless driving? He asked how many accidents were caused by cell phones or spilling coffee or navigation systems?

Mark Muir stated that either offense require driving behaviors that place property or persons at risk. A small amount of weaving or almost rear-ending someone is not a violation. He stated there were eight accidents determined to be caused while a cell phone is in use.

**Jason Wiener made the motion for to move the ordinance as proposed.**

**Pam Walzer stated she would like to include an amendment to offer hands free devices as a secondary offense.**

Jim Nugent by secondary it means that some other instance drew the attention of law enforcement to that individual. Are you then further wanting to limit it to just accidents because secondary offense is going to be a lot broader than just the accident. With respect to the accidents, I think either way you could come up with the language if you wanted to focus on the accident. I think the only way the police are going to know is if they start taking everyone's cell phone number and routinely start checking if the phone was in use at the moment of the accident. It could be doable if the majority of the City Council desires to have a secondary offense constitute an offense if there is evidence of an accident.

**Pam Walzer stated she would like to amend the ordinance to make the hands free be a secondary offense** and I would leave it up to the police to make the discretion of when to investigate if they, for a red light, they've got someone for a red light infraction, they don't need to use the hands free cell phone just like seat belts. Pull somebody over and they don't happen to have their seat belt on, well the seat belt goes on really quickly but if you have an accident and you're trying to find cause, the use of cell phone at the same time could be part of the investigation. Maybe I need to have the Police answer that question.

Mark Muir stated he wants everyone to understand what sort of burden that could create in terms of work load. In order to get any of those records, it has to be done through the process of subpoena. There are thousands of car crashes that occur in our community every year and that's going to be a significant addition to work load just to make that one change. If we are going to do something in that fashion, we need to do it on a fairness or consistency basis. Yes, it might be limited to just instances of car crashes, that is still a couple thousand subpoenas that we have to prepare each year and get those out and returned and peruse the records and the question of what exact time did the crash occur versus the time it was reported versus the time it was arrived versus the time differences of the various clocks recording the times.

Pam Walzer stated since it sounds as though it is completely undoable, she will withdraw the amendment and hopefully this progresses in our culture that hands free is also considered unacceptable.

Bob Jaffe stated he has mixed feelings on this whole idea. He is not in favor of applying it to bicycles. The hazards while driving cars are completely different than when riding a bike. If a cyclist has an accident, they put themselves at risk. He stated he doesn't see this as rising to the same level as drunk driving. I would support this whole thing if it were a secondary offense. I would like to amend the ordinance to be a secondary offense.

Dave Strohmaier stated he opposes making this a secondary offense.

Ed Childers stated he was hoping somebody would make the motion to amendment and that he can't support the primary offense, I support this amendment. He stated there probably needs to be some re-write and that he prefers to have an ordinance that makes cell phone use, whether held or hands free, equivalent. He stated our goal is not to keep people from holding a phone, our goal is to keep people paying attention to driving. He stated he would like that as a friendly amendment if Bob would take it to make just using the cell phone as a secondary offense.

Bob Jaffe clarified that taking out the distinction of hand held and hands free? Yes, I would accept that.

Dave Strohmaier OK, the ordinance is applicable to hands free and hand held devices and would constitute a secondary offense.

Jason Wiener I'm not going to support the amendment.

Renee Mitchell stated she cannot support these motions as they are right now.

Dave Strohmaier stated the motion is to make this a secondary offense and make it applicable to hand held and hands free devices.

Dick Haines Call for the question.

Dave Strohmaier OK call for the question, that is non-debatable. All those in favor of calling for the question? 6 in favor of calling for the question, 3 opposed, the motion carries.

Jon Wilkins point of order, I wanted a definition on "other electronic communication"?

Dave Strohmaier asked for public comment before taking the vote on the amendment. No public comment on the amendment. OK, let's vote on the amendment to make this a secondary offense applicable to both hand held and hands free devices, all those in favor please raise your hand? 3 in favor, 6 opposed. Motion fails. We are back to the main motion. Asked for public comment on the main motion.

Gary Bakke asked if this is enacted, would we need to put up notification to visitors, signs at every entrance to Missoula? He asked about the hand held phone having the speaker phone turned on, it then becomes a hands free device. Where is the determination from hand held to hands free?

Dave Strohmaier asked the committee if they choose to vote and move this to the floor, or hold it in committee, since we are out of time?

Jon Wilkins stated he would like to hold it in committee.

Pam Walzer stated she would like to have this pass, so if it would take one more committee meeting to work out what an electronic communication device is so we can figure out, maybe we can get a couple more votes on that. She stated she still has a problem with hands free and that she would like to have one more shot at it in committee and see if we can get the votes to make this pass.

**Dave Strohmaier** OK we are totally out of time, let's just **hold this in committee**. We will revisit this item maybe in a couple weeks from now. Public Safety will stand adjourned.

## **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. [Ordinance](#) amending Title 10 entitled "Vehicles and Traffic" Chapter 10.20 entitled "Operation of Vehicles" by adopting and establishing new sections 10.20.300, 10.20.310 and 10.20.320 generally prohibiting the use of hand-held mobile telephones and other electronic communication devices while simultaneously operating a motor vehicle or a bicycle. ([memo](#)) ([PS&H](#)) (Returned from Council floor: 04/13/09)
9. Authorize Police Department to hire Internet Crimes against Children (ICAC) officer, purchase printer/copier/scanner, lease vehicle for ICAC program ([memo](#)).—Regular Agenda (Mark Muir) (Referred to committee: 04/20/09)

## **V. ADJOURNMENT**

The meeting adjourned at 10:03 AM. Submitted by Leslie Willis.