

**JOURNAL OF PROCEEDINGS  
MISSOULA CITY COUNCIL  
MAY 10, 2010**

**CALL TO ORDER AND ROLL CALL**

The meeting of the Missoula City Council was called to order by President Childers at 7:00 P.M. in the Council Chambers at 140 West Pine Street. Present were Alderwomen Hellegaard, Marler, Mitchell, and Walzer and Aldermen Haines, Houseman, Jaffe, Strohmaier, Wiener and Wilkins. Also present were Chief Administrative Officer Bender, City Attorney Nugent, Finance Director Ramharter, Public Information/ Communications Officer Merriam and City Clerk Rehbein. Mayor Engen and Alderwoman Rye were absent.

**APPROVAL OF MINUTES**

Minutes of the regular meeting of [May 5, 2010](#) were approved as submitted.

**SCHEDULE COMMITTEE MINUTES**

The following meetings were announced:

No meeting	Public Safety and Health (PSH)
Wed. May 12, 2010, 9:05 – 10:00 AM	Conservation Committee (Cons)
Wed. May 12, 2010, 10:05 AM – 12:00 PM	Plat, Annexation and Zoning Committee (PAZ)
Wed. May 12, 2010, 1:05 – 2:00 PM	Administration and Finance Committee (A&F)
Wed. May 12, 2010, 2:05 – 2:30 PM	Public Works (PW)
Mon. May 17, 2010, After the council meeting	Committee of the Whole (COW)
No meeting	Economic Development Subcommittee (EDS)
No meeting	Budget Committee of the Whole (BCOW)
No meeting	Urban Wildlife Subcommittee (UWS)
No meeting	EIS Peer Review Subcommittee

**PUBLIC COMMENTS**

Lynn Solomon talked about I-163. A few weeks ago a editorial in the *Missoulian* talked about DUI treatment courts and how they can help communities address impaired driving. Also last Friday the *Missoulian* ran an article by Jason Miller who is the campaign manager for I-163. The official title is “The Montana Comprehensive Alcohol Abuse and Drug Free Plan Act.” It would create a plan to address alcohol and drug abuse and be funded by shifting a portion of the state’s alcohol tax money into a state special revenue account with an estimate about \$5 million annually. Of that fund a portion would go to drug treatment courts. Missoula has a couple of outstanding treatment court models here in town. There’s a co-occurring court and a DUI court. Drug treatment courts can involve adults, juveniles, DUI cases and can involve drugs, alcohol, family court. They use a coordinated team approach to rehabilitate offenders, reduce abuse and reduce recidivism. Another chunk of this money would go toward alcohol and drug monitoring programs. Taking advantage of technology, the most obvious example is the scam bracelet, the bracelet that offenders wear on their ankle to check if they’ve been violating the terms of their sentence, and also programs that have succeeded elsewhere. One example is the 24-7 program that the Attorney General is doing a pilot project in Lewis and Clark County right now. Another chunk of this state special fund will go to a meth prevention program called Meth Watch and the biggest chunk would go to a catch-all fund that would go to the Montana Board of Crime Control. The Board of Crime Control could then intern grant some of those funds to qualified recipients, which would be anything from a law enforcement agency, a community group, a youth prevention organization and then those qualified recipients could use those dollars for programs for education prevention, treatment of drug and alcohol abuse. The plan outlined in I-163 does not raise taxes nor does it move around funds that are already provided to the state for treatment. The societal costs of drug and alcohol abuse in Montana more than \$510 million a year. The hope is this will save money for folks, reduce the burden on the state’s law enforcement corrections treatment judicial systems and with hope save some lives, keep some folks clean and sober. The next step is signature-gathering that’s going on right now. This community is

obviously very actively involved in the dialogue about alcohol, drugs and impaired driving. She appreciated the chance to come tonight, her new home town, and talk about I-163.

Kandi Matthew-Jenkins continued with the investigation done by Senator Nancy Schaffer of Georgia who is now deceased on corruption and child protection services. "The Adoption to Save Families Act set in motion by President Bill Clinton afforded bonuses to the states for each child they adopted out of foster care. In order to receive the adoption incentive bonuses local child protection services need more children. They must have merchandise children that sell and you must have plenty of them so the buyer can choose. Some counties are known to give \$4,000 worth of bonus for each child adopted and an additional \$2,000 for special needs children. Employees work to keep the federal dollars flowing. Since 2004 George W. Bush added \$4,000 for children over 9 making it \$10,000 per child. This goes into the state general fund. There is double-dipping. The funding continues as long as a child is out of the home. When a child is in foster care and is placed in new a new family, adoption bonuses funds are available. When a child is placed in a mental health facility and is on an average of 16 drugs per day, two children are a constituent of mine, more funds are involved. There are no financial resources or real drive to unite a family and help them keep together. That an incentive for social workers to return children to their parents quickly after taking them has disappeared. And who in protective services will step up to the plate to say, this must end. No one. Because they are all in the system together and a system with no leer and no clear policies will always fail the children. Look at the waste in government that is forced upon the taxpayer. The policy manual is considered the last word of DFCS, however, these are too long, too confusing, poorly written and does not take the law into consideration. If the lives of the children were improved by removing them from their homes, there might be a greater need for protective services but today all children are not always safer. Children of whom I am aware have been raped and impregnated in foster care and the head of Foster Parents Association in my district was recently arrested because of child molestation."

#### **CONSENT AGENDA (1 ROLL CALL VOTE)**

1. Approve [claims](#) totaling \$552,330.15. ([Detailed Claims](#)) ([Chart of Accounts](#)) (A&F) (05/11/10)
2. Approve and authorize the Mayor to sign the Home Investment Partnerships program (HOME) contract ([Contract Number H-10—02](#)) with HomeWORD in the amount of \$315,000 for acquisition and construction of the Solstice project as authorized in the City Council per resolution number 7502 and amended by resolution number 7524. ([A&F](#))
3. Approve the amendments to the Emma Dickenson/Orchard Homes Neighborhood Council bylaws officially changing the name of the neighborhood council to River Road Neighborhood Council. ([memo](#))
4. Approve the proposed plat adjustment and condition amendment for the Grove Street Addition plat subject to the amended conditions of approval as shown in [memo attachment 2](#) dated May 5, 2010 in PAZ report. ([PAZ](#))
5. [Resolution](#) 7526—Adopt a resolution of intention to adopt the revised City Council draft of the City Subdivision Regulations articles 1 through 9, dated April 30, 2010 as amended by the Planning Board and set a public hearing for June 7, 2010. ([PAZ](#))
6. Forward the proposed amendments to Title 20 to the Planning Board for its consideration and recommendation. ([PAZ](#))
7. Authorize the Mayor to sign contract with Mountain Water for the installation of a fire hydrant in the Franklin-to-Fort area. ([PS&H](#))

Acting Mayor Childers said, thank you, ma'am. Everyone satisfied with that? Nobody wants to take anything off? Alright, let's have a roll call. Sorry, I don't do this often enough to know what's going on. Public comment on our consent agenda? Anyone need to comment on the consent agenda? No one. Any Council members wish to take any items off? No one. Now perhaps we can have a roll call vote.

Upon a roll call vote, the vote on the consent agenda was as follows:

AYES: Childers, Haines, Hellegaard, Houseman, Jaffe, Marler, Mitchell, Strohmaier, Walzer, Wiener, Wilkins

NAYS: None

ABSTAIN: None

ABSENT: Rye

Motion carried: 11 Ayes, 0 Nays, 0 Abstain, 1 Absent

## **COMMENTS FROM CITY STAFF, AGENCIES, COMMISSIONS, AUTHORITIES, AND COMMUNITY FORUM** - None

### **SPECIAL PRESENTATION**

- [Missoula Home Remodeling Month](#)

Acting Mayor Childers proclaimed May, 2010 as Missoula Home Remodeling Month.

- [Travel & Tourism Week](#)

Acting Mayor Childers proclaimed May 8 through May 16, 2010 as Travel & Tourism Week.

- [New Zealand Days](#)

Acting Mayor Childers proclaimed May 22 through May 24, 2010 as New Zealand Days.

### **PUBLIC HEARINGS**

- Public hearing on a [resolution](#) to vacate the alley in Block 7 of the Manitoba Addition, with the additional condition that an easement for maintenance be granted. ([memo](#)) ([Staff Report](#)) ([Presentation](#)) ([PW](#))

Carla Krause, City Public Works Department, said, the petitioners for this vacation request own the property on the north side of the alley. They've been in contact with the property owner on the south side and that owner has expressed no objection to the vacation and understands that if the property's vacated, he will assume all legal liability and additional taxes for the new square footage that will revert to his property. This is an older alley. It was platted as a 20-foot wide right-of-way as part of the Manitoba Addition in 1889. It's generally located between Latimer and Great Northern Streets in between Palmer and American Way and there are some surrounding land uses like Pacific Recycling which is across Latimer Street to the east and Target across Great Northern on the west side of the property where the alley is located. The Manitoba Addition developed primarily as part of an industrial and commercial area of Missoula and the plat has been modified many times by changes such as the bisection of West Broadway, the railroad right-of-way and past vacations that allowed for larger properties to accommodate the industrial and commercial uses that went in there. Let's see if I can move this to the next page. Okay, and then the aerial photograph that's on display now shows how the area generally looks today including the alley located near the center of the photograph where the Northwestern Energy and the City have an existing gas main and a sewer main and manhole and they're comfortable with the vacation of the right-of-way as long as the adjacent property owners utilize that vacated alley as grassy landscaped area leaving it unencumbered by structures or improved landscaping. City Engineering has reviewed and approved a site plan that addresses the need for improved ADA and pedestrian facilities for the church property on the north side of our petitioners this evening that includes improved off-street parking and traffic circulation as well. And the City Engineering Division has requested that the improvements be installed within six months of vacation approval to be one of the conditions of vacation. And in addition to the conditions that the Engineering Division has asked for and that the utility companies has asked for, Public Works Committee also added a condition that each of the property owners that will benefit from the right-of-way vacation execute a standard utility easement so that there's a clear and easily researched public record showing that the sewer and gas mains exist in the alley and that there needs to be room maintained for maintenance of those so that all of the properties adjacent to that main and gas and sewer main can continue to be served. The petitioners have fulfilled all the requirements of the Missoula Municipal Code for requesting the vacation. They've paid all the necessary fees. The City has met the statutory requirements for proceeding with the right-of-way vacation beginning on April 26<sup>th</sup> when the Council adopted Resolution of Intention 7523 and scheduled the public hearing. Staff posted the site on

April 30<sup>th</sup>. The City Clerk has advertised legal notice twice on May 2<sup>nd</sup> and the 9<sup>th</sup>. Public comment was accepted beginning May 3<sup>rd</sup> through 5:00 p.m. this evening. No written comments were received. And Council is conducting the statutory public hearing with the final step being to either adopt a resolution vacating or to deny this request. A resolution of vacation has been drafted for Council's consideration tonight describing the portion of alley to be vacated, how it will revert to the adjacent private property owners and lists the conditions of vacation. Suggested motion language might be to adopt a resolution closing and vacating a portion of the alley right-of-way platted in Block P of the C.P. Higgins Addition located between East Alder and East Spruce Streets and Washington and Adam Streets with the three conditions listed. And that concludes my staff report. Thank you.

Acting Mayor Childers said, thank you. Is there any public comment on this resolution? Anyone? No one. Alright, I'll close the public hearing. Are there questions or comments from the Council? There are none. Mr. Wiener?

Alderman Wiener said, I move that we close and vacate the alley right-of-way platted in Block 7 of the Manitoba Addition located between Latimer Street and Great Northern Way, between American Way and Palmer Street on the condition of the easement and the amenities improvements.

Acting Mayor Childers said, thank you, sir. Ms. Rehbein, let's have a roll call vote.

### **RESOLUTION 7527**

#### **MOTION**

Alderman Wiener made a motion to adopt a resolution to vacate the alley in Block 7 of the Manitoba Addition, with the additional condition that an easement for maintenance be granted.

Upon a roll call vote, the vote on Resolution 7527 was as follows:

AYES: Childers, Haines, Hellegaard, Houseman, Jaffe, Marler, Mitchell, Strohmaier, Walzer, Wiener, Wilkins

NAYS: None

ABSTAIN: None

ABSENT: Rye

Resolution 7527 carried: 11 Ayes, 0 Nays, 0 Abstain, 1 Absent

### **COMMUNICATIONS FROM MAYOR**

Acting Mayor Childers mentioned the tragic death of Dylan Steigers, who was a Sentinel High School graduate and was playing football in eastern Oregon, and we're terribly sorry for the family.

### **GENERAL COMMENTS OF CITY COUNCIL MEMBERS**

Alderman Wilkins welcomed his brother, who is from North Carolina, came to town and hadn't seen him for 25 years and he really likes Missoula. His brother wanted to see mountains and it seems they've just been staying in Missoula. They went to Lolo Hot Springs today. His brother is a long haul truck driver and Alderman Wilkins commented on the item that's coming up tonight in Public Works and he had asked if you guys are nuts. He'll tell the rest of the story later.

Alderman Houseman announced that May 13<sup>th</sup> from 7 to 8:00 p.m. at the Missoula Memorial Rose Garden is the 10<sup>th</sup> anniversary dedication of the Missoula Law Enforcement Monument and the Missoula Police Department invites everyone to enjoy remembrance and celebration.

Alderwoman Walzer announced that on May 13<sup>th</sup> that the Missoula Forum for Youth Council at 9:00 a.m. to 11:00 a.m., at the Missoula Children's Theatre, there will be a presentation on "Under 21 and After

Dark: What are Missoula City and County Youth Really Doing and What Do They Want to be Doing?" This is something that has been facilitated and produced 100% by youth in our community and they'd like to engage the adults in our community in trying to find some solutions of what the youth are really doing and maybe what we want them to be doing. It's free and open to the public and should be very interesting and enjoyable. One thing the youth could be doing is attending the International Wildlife Film Festival this week with lots of good film available at the Wilma and lots of family interests. Tuesday there will be a special workshop on The Wolverine, from Villain to Vulnerable, which will be at the Roxy.

Alderman Wiener announced that Tuesday evening at the Maureen and Mike Mansfield Center in the Continuing Ed Program at the U of M there will be a presentation of the bipartisan community conversation called "What's Broken, the U.S. Government or Us?" That starts at 7:00 p.m. in Room 204 of the James Todd Building and features former Congressman Pat Williams and former Secretary of State Bob Brown and Home Ground Radio's Brian Kahn will moderate.

Alderman Strohmaier said if folks weren't able to take in last Friday's dedication of our new Missoula Firefighter Tribute, please stop by Memorial Rose Park and check it out. It's a beautiful tribute to the men and women who have served and will continue to serve the citizens of Missoula.

## **COMMITTEE REPORTS**

### **Administration and Finance Committee**

[05/05/2010](#)

### **Conservation Committee**

[05/05/2010](#)

### **Economic Development Subcommittee**

[05/05/2010](#)

### **Plat, Annexation and Zoning Committee**

[05/05/2010](#)

### **Public Safety and Health Committee**

[05/05/2010](#)

- [Emergency Ordinance](#) and [Ordinance](#)—Adopt an emergency ordinance and regular ordinance amending Missoula Municipal Code Title 10, entitled "Vehicles and Traffic," by adding Chapter 56 entitled "Refusal to submit to alcohol and/or drug tests" and enacting sections 10.56.010 through 10.56.030.

Alderman Strohmaier said, President Childers, I move that we adopt both an emergency and regular ordinance amending Missoula Municipal Code Title 10, entitled "Vehicles and Traffic," by adding Chapter 56 entitled "Refusal to submit to alcohol and/or drug tests" and enacting sections 10.56.010 through 10.56.030, and I'd like to speak to the motion. So I don't think I need to list off the litany of reasons why DUI is a very serious issue both throughout our country and also within the state of Montana and Missoula, Montana which has a very serious problem of DUI. A little bit earlier in the year the Public Safety and Health Committee of the Missoula City Council hosted a panel discussion where we heard from a number of professionals here in Missoula as to both what the problem is and what we might consider doing as a municipality to try to address DUI. One of the pieces of what I thought was low-hanging fruit that was suggested by some folks on that panel was, as a municipality, to criminalize refusal of a breath and/or drug test, if suspected of driving under the influence. So it's with that in the background that I decided to propose the ordinance that you're seeing finally back before us tonight. And my two main reasons for trying to put this forward were one, to send a clear message to Helena that our legislators need to take DUI more seriously than they have in the past and, secondly, to maybe inspire our fellow municipalities throughout the state of Montana to also do what they can within the constraints of state statute. Some have characterized, and I should say before going on the City of Darby took that very seriously and went ahead and lifted our language and enacted this ordinance prior to us having a chance to do so which is admirable for them, our legislative process sometimes moves a little slower up here to the north, but some have characterized this ordinance as kind of a strongman argument and by

that I mean they've characterized it as we're proposing a silver bullet that's somehow going to solve all of our DUI problems, and that's absolutely not the case. I see this as one component of a multi-pronged effort that's going to take education, treatment and also stiffer penalties I think, and this among those. The motion that I just made is moving forward the draft that we amended in committee last week and that language makes refusal violation of this ordinance a misdemeanor offense with a mandatory \$500 fine that cannot be waived by the court. At one point I did offer some alternative language that would have made this...made violation of the ordinance a civil penalty rather than a misdemeanor criminal offense. I think my concerns have been addressed satisfactorily by Jim Nugent, our City Attorney, that this indeed not a violation of either 4<sup>th</sup> or 5<sup>th</sup> Amendment of the U.S. Constitution, so with that I think I'll just say that I think this is a small step, albeit an important step for the City of Missoula to say we're going to do what we can to deal with DUI. Thank you.

Acting Mayor Childers said, thanks, Dave. Questions or comments from the Council? Pam and Jon?

Alderwoman Walzer said, I'd like to offer an amendment. I emailed it out to everyone on Council this evening and I'd like to amend the purpose and intent section on both the emergency and the regular ordinance to add at the end of the section, "Monies received under Section 10.56.030 of this chapter are to be used to assist in the monitoring and/or treatment of individuals arrested or convicted of driving under the influence of alcohol and/or drugs." I'm offering this because I really believe that someone who is willing to forego their driver's license for six months to a year for refusing to take a breathalyzer will not be deterred by a misdemeanor fine. But I do think it's important that the money that is...what is important is that these people receive some sort...once they're convicted or arrested and charged with, that they have some sort of monitoring and/or treatment available to them much more than we have now in our Municipal Court. I attended a luncheon today, the City Club with Judge Orzech with her attempts of establishing DUI Court in Missoula and success of the DUI Court in Billings. I've talked to family members of a person who's going through the DUI Court in Billings. And I'm really sold on the importance of having monitoring and treatment but the problem is we don't have money for it. Now this is a source of money; the intent is not to generate revenue but it is a source of money and rather than have this go into the black hole of the city general fund, I think it's important that we move forward with taking this one step, as Dave said, and really pushing forward to what really is the next step and as treatment and are monitoring of those who are either charged with, arrested or convicted of DUI with drugs or alcohol.

Acting Mayor Childers said, thank you, ma'am. I think we better try to confine our comments or questions to Ms. Walzer's amendment. Dave, something quick?

Alderman Strohmaier said, this seems like a good idea. I'd like to hear from Jim Nugent as far as, do you detect any...are there any problems with restricting the use of the monies in this way?

Acting Mayor Childers said, Mr. Nugent, have you thought through that?

City Attorney Nugent said, these are City ordinances. It's fine when the City Council has the ability to direct those monies to be deposited in certain earmarked accounts so I think it's probably within your power and authority to do so if you so desire.

Alderman Wilkins said, well through the State Correctional Department, there's money set for treatment through that, and we did discuss in the committee meeting and our Chief of Police, Mr. Muir, told us that he spends a lot of money in overtime and that's overtime for the officer to go to court. It might be on their day off and they have to be in court and I do believe they get paid a certain amount of hours whether they're there or not. And there was a little bit of talk about maybe these fines going to help relieve that cost because that's a cost that all us taxpayers are paying and then also I think in the...in Mr. Nugent's office where they prosecute the City DUI things, there's a lot of money, so I'm not going to go for the amendment. I would rather see an amendment in there that this money be earmarked to pay the extra costs of our City Police Department and our City Attorneys Department on prosecution of DUIs because there is money already that's given towards treatment, the state does it, I think the County is involved in some of that and I think that's pretty well taken care of. Whether it could be better or not, yeah, it probably could be better treatment but I think the money should go towards that to help afford our Police Department.

Acting Mayor Childers said, okay, I'll comment on that. I think there are dozens of possible places to earmark...

Alderman Haines said, Mr. President, would you speak into the mic so I can hear you?

Acting Mayor Childers said, Mr. Haines, I'll be happy to speak up if I can.

Alderman Haines said, thank you.

Acting Mayor Childers said, I think there are dozens of possible places to send that money and I don't think there'll be much, heck, I don't think there will be much at all. I'm hoping. But I'm personally not interested in earmarking the money. It makes it...it just makes it too difficult. So I have Mr. Haines and I have Mr. Houseman.

Alderman Haines said, thank you, Mr. President. I didn't mean to interrupt you but I couldn't hear what you were saying. Pam, I would probably support this ordinance but this...tacking this on as an amendment leaves me a little bit nervous. There's nothing that specifies who will determine how it is spent. Just used to assist is pretty open and questionable and what could be the priorities and whom monitors the spending and how much will go where? And in the long run it could bring about the view that this is the reason we punish these people this way is because we're trying to raise money for the city and I think that's always something in law enforcement we want to stay away from. So if this tacked onto this ordinance tonight, I can't support the ordinance.

Alderman Houseman said, yeah, I have to say that I don't believe I can support this amendment. Just the other day we received an email filed from the 6<sup>th</sup> of May specifically stating how the Municipal Court had difficulty getting a hold of an individual on a DUI and he was able to get off in District Court, and one of the reasons why was because the attorneys have such a heavy caseload that they can't, you know, they're having difficulty handling all the penalties in DUIs that are currently being handled, and if this revenue could be used to help assist in that manner, I think that that's a great thing to do. Additionally, you know, I am a little concerned about the earmarking.

Alderman Strohmaier said, I think I'll support the amendment. I think the ordinance as a whole, the purpose is to reduce the caseload because since we're...I mean the whole rationale for having the ordinance is to...because now nobody's going to refuse a breath test once we pass this thing, so obviously the caseload is going to go way down. So...and if the concern is that the impression that the money is going to...we're passing an ordinance where the money will go to our police, I mean that's the exact opposite of what the amendment suggests, so I think the details about how exactly it would be expended can be resolved either administratively or through the Council. But I think the goal of, as far as the purpose of this ordinance as something symbolic and trying to send messages, I think again having this language added to it accomplishes that even further to acknowledge...a lot of the comments we had during the DUI panel that we did indicating that really the drug courts and the treatment programs were essentially where we get results, not necessarily just with more punitive laws. So I think adding this language does send the correct message as far as what we're trying to say here.

Acting Mayor Childers said, further comments or questions from the Council?

Alderwoman Hellegaard said, we've hear Pam say many times that the \$500 isn't going to be a deterrent. I think having them pay for their own monitoring and treatment, I don't have a problem with that. I deal with the Federal Transit Administration Drug and Alcohol Programs on a daily basis within the federal program. If a public transit driver tests positive for either drugs or alcohol, they're responsible to pay for their treatment, monitoring, all that so I think this amendment only weakens it. I think it's much stronger without it where the offenders know that they're going to have to foot the bill for this kind of stuff. I'd rather see the money, as Jon said, go to overtime for our police and our court systems to prosecute these people.

Alderman Wilkins said, well one thing I did forget to add is that the offenders do pay for their treatment, even the electronic monitoring thing. That is provided by a for-profit outfit and the offender pays for that too. The offender themselves is paying a big portion along with these agencies that provide that, they do get state money for that and the reason I know that is because my wife is involved in that through

Missoula Correctional Department and so I do know that the offenders do pay for their treatment on this sort of thing. So I just needed to throw that in to let you know that the state is not paying for all of it.

Acting Mayor Childers said, thank you. Ms. Walzer, would you repeat your amendment and then we'll have some public comment on it.

Alderwoman Walzer said, the amendment is to add to the purpose and intent section: "Monies received under Section 10.56.030 of this chapter to be used for assisting in the monitoring and/or treatment of individuals arrested or convicted of driving under the influence of alcohol and/or drugs."

Acting Mayor Childers said, okay. Further City Council comments on the amendment? Do we have any public comment specifically on this earmarking amendment? Specially on the amendment which is on the floor which is to earmark the money for drug and alcohol treatment. Okay. We'll get...so am I. We'll get to the rest of it pretty soon. Just specifically on the amendment? No one on that one. Okay. We could try a voice vote.

## **AMENDMENT**

Alderwoman Walzer made a motion to amend the purpose and intent section on both the emergency and the regular ordinance to add at the end of the section, "Monies received under Section 10.56.030 of this chapter are to be used to assist in the monitoring and/or treatment of individuals arrested or convicted of driving under the influence of alcohol and/or drugs."

Upon a voice vote the motion failed.

Acting Mayor Childers said, the amendment fails. Back to discussion from the Council on the main motion. Mr. Wilkins?

Alderman Wilkins said, well, I'm not going to support the motion and it isn't because I approve of drunk driving at all and actually I was the one that brought the motion to increase the fine from \$300 to \$500. I do have a problem of saying that I'm guilty before I'm proven guilty. I have a problem if we start here, where does it end? That's the main problem I have so I would like to put an amendment in to delete the misdemeanor offense and keep it a civil penalty. So delete the misdemeanor part of it because the second you say, no, you've got a misdemeanor offense and even down the line, if it's proven that you didn't have a DUI, you still have that misdemeanor offense, and that's a criminal record. So there's no provisions in this that says, well, you're found innocent later on, that you can get rid of that misdemeanor thing, so the second you say, I'm not going to blow on your breathalyzer you're a criminal. I don't think breathalyzers are totally reliant. They're a good tool. The police have other tools that they use including video, including, you know, you've all seen touch your nose and walk the straight line and if you don't do that, then you're arrested. Well, once you're arrested then you can be demanded to take a blow test which generally isn't a portable one. It's generally the one that's at the Detention Center and you can be asked to do blood tests after that. But the point is you've already been arrested and the point is that you're asked to blow, you haven't been arrested yet, so there are definite ways to determine whether you're a suspected DUI person or not and other things they have. And I just have a problem with saying that you're guilty before proven guilty so I won't support the ordinance not unless we can get an amendment in to delete the misdemeanor offense. And I would like to put that as an amendment.

Acting Mayor Childers said, alright, we have an amendment on the floor. Mr. Strohmaier?

Alderman Strohmaier said, okay, I have a question for Police Chief Mark Muir. Chief Muir, could you speak to the issue of whether violation of this ordinance, even though it is a misdemeanor criminal offense, will or will not go on someone's official record with the state of Montana?

Police Chief Muir said, the Missoula Municipal Court does not report City ordinance violations to the state of Montana Criminal History Depository.

Acting Mayor Childers said, okay, Ms. Hellegaard?

Alderwoman Hellegaard said, just some clarification. In Section 2, for Mr. Nugent, down at the bottom there's a sentence that says, "However the person refusing to submit to any such requested breath or blood alcohol and/or drug test may be charged with the misdemeanor offense pursuant to the this section." Am I interpreting that right that it's at the police officer's discretion as to whether they charge them with a misdemeanor?

City Attorney Nugent said, that's correct.

Alderwoman Walzer said, I wanted to point out that in the process since I'm intimately familiar with it of being arrested for a DUI, that you're requested to submit to a breathalyzer test prior to being allowed to consult an attorney. You have to make that decision. You are told by the officer you may not consult an attorney on whether or not you should take a breathalyzer. You're not arrested yet and you're given your Miranda Rights after you take the breathalyzer. So that's just a piece of information to ponder about on now it will be a misdemeanor to say, no, I don't want to have a breathalyzer yet I'm committing something...I don't have the chance to talk to an attorney whether I know I'm making the right decision or not, I don't know. We have to figure out all of this and then you are arrested for a DUI after you refuse the breathalyzer or after you take a breathalyzer, if you choose to do that, but you're not arrested until...you don't get your miranda rights until after you've made that decision.

Alderman Wilkins said, well, to respond to whether that goes on your records at state level, somewhere it's in your records and it could probably be brought up. It could be brought up in employment or something else. The key to this I think in my mind is that you're saying you're guilty just by saying no before you're proven guilty, and I think in our laws you're supposed to be innocent until proven guilty, and that's the problem I have. And I think in the large scheme of things, it isn't that person that refuses that DUI, that comes down to the second, third and fourth time when a person gets a clue this might be a way I can get out of it. Some way this thing should talk about that. I asked the Police Chief, well, when you call in the license number and stuff, do you know whether this is their second, third or fourth? The answer is, not all the time, we don't know that. So, you know, maybe we need to fix that so we do know that somehow and that would make a complete difference that you can't refuse if you've already had a DUI one time. And that's really our problem is that guy with the second, third, fourth, you know, and as far as the state level, I know Mr. Lynch is here. Maybe he can pass this on. This is something that we really need to address. Maybe it should be a felony before it goes four times instead of just, you know, maybe we need that felony on your second or third time. But anyway we're not addressing that in this ordinance and there's a lot of things that could be done at the state level that should be done at the state level but I'm still against that I'm presumed guilty before I have a trial or any of that sort of thing. And I'm also against that if I'm found innocent and I wasn't DUI, I've already got this misdemeanor on my record and there's no way to get rid of it, so that's the problem that I'm seeing in this. Otherwise I'd be for this ordinance probably really strongly but it's...I think the misdemeanor part...I also think that we're going to be challenged on this at some point but Missoula's challenged on a lot of things we do, so I'm not sure that's completely relevant but I'd rather see some of these challenges not happen though in essence we're footing the bill here so...But anyway I did put that into the amendment so I'd like to see that go.

Alderman Houseman said, I can't support the amendment but if I could have Chief Muir answer a couple of questions for the Council it would be nice. What is the process that an officer goes through before pulling...before giving the breath test?

Police Chief Muir said, it's a three-step process. The first is observation of the vehicle in motion, the second is actually communicating with the driver, and then the third step is the standardized field sobriety testing. With those three steps completed an officer has a high degree of reliability in asking for a breath test and at that point they have essentially established probable cause to a reasonable degree of certainty with respect to whether or not a person is intoxicated.

Alderman Houseman said, okay and follow-up. And you mentioned yesterday or on Wednesday that one of the reasons that you didn't prefer...or did not prefer to have this be a municipal fine...infraction and you preferred to have it as a misdemeanor is because there could be another court case involved?

Police Chief Muir said, yes, if this were to become a civil infraction, it would require a separate legal proceeding to take place in order, if the individual wanted to challenge the alleged violation of the civil infraction, it would create a third legal proceeding. The first legal proceeding that is available to an

individual who has refused a breath test and had their license taken from them is to pursue a reissuance of the license by District Court. The second legal proceeding that currently exists is, of course, the criminal proceeding with reference to the DUI. And then the last would be a civil proceeding in Missoula Municipal Court if this were to be a civil infraction.

Acting Mayor Childers said, thank you. Further questions or comments from the Council on the amendment? Ms. Mitchell?

Alderwoman Mitchell said, Chief Muir, I'm sorry to...you'll certainly get your exercise tonight. It's my understanding from previous testimony that people that refuse to take the BAC and have a trial, their conviction rate is lower. Is that then...if...then the percentage of people that get off is higher?

Police Chief Muir said, the percentage of individuals who are convicted of DUI or DUI per se is lower, yes, about 20% lower.

Alderwoman Mitchell said, and how are these convictions usually obtained? Is it because you had an audio/video of the person is just the officer's statement or...

Police Chief Muir said, it's a combination of a lot of different factors, I mean, in some cases, you know, it's a real balancing act but it essentially comes down to the presentation of a case that will convince either the judge or a jury of the fact that the person, based upon the officer's training and experience, was under the influence of alcohol at the time that they were operating a motor vehicle.

Alderwoman Mitchell said, so there's...I guess what I'm trying to get at, is there some evidence that these people are beyond .08, way beyond that or are they just kind of barely above it or the people can get convicted are usually, they were pretty impaired?

Police Chief Muir said, the standardized field sobriety test at the time that they were originally developed were in keeping with, at the time, a .10 BAC level and so with a 77% degree of accuracy, just with one test alone, it's an 83% degree of accuracy with all three tests performed, an 83%, you know, degree of accuracy, with respect to the individual, being greater than a .10. So there's some cushion in there now with respect to the current statute which has been reduced down to a .08.

Alderwoman Mitchell said, and is there a specific order in which a person is asked to give a BAC or do a field sobriety test? Do you have a certain order that you follow?

Police Chief Muir said, yes, we do. In fact, the officers keep track on a note card, they go through, they read all the implied consent, should this pass we'll need to reprint those cards because we'll have to insert language to make certain that the individual is made aware of the fact that they face a potential penalty with respect to this municipal ordinance.

Alderman Jaffe said, don't sit down yet. Alright, so I'm not quite decided on how I'm going to vote on the amendment. From what you've told us, you know, throughout this whole process, what I gather is you've got these steps you go through and for the most part I'm of the mind that if little steps are followed, the Fourth Amendment concerns are pretty well satisfied that you have. It's not an unreasonable search at that point. You have reasonable suspicion to make an arrest and to gather more evidence in that effort. So...and I asked whether or not there would be some need for language, you know, somehow putting that in that that's process...with having...you indicated that that's covered by state law, something to that effect, that the process you follow is pretty much not optional. I was wondering if you could elaborate on that? I didn't have a chance to ask again for some detail on that.

Police Chief Muir said, well it's based upon the interpretation of the implied consent law and so the officer goes through that process, as I've explained, you know, they have a note card, they go through, they read the implied consent advisory, the implied consent advisory does give additional information, for instance, as Ms. Walzer was pointing out, it points to the fact that they don't have the right to speak to an attorney prior to making the decision on whether or not to take the test, you know, it's all very straightforward and upfront at the time that we are asking for that breath test. There's a slightly different one for drivers under age 21 who might be driving with a .02, with a BAC .02, so if we're checking out a person under 21 that has passed the tests but has shown some kind of clue as to having consumed alcohol, we'll do the .02

advisory as opposed to the regular implied consent advisory. So it's basically established through case law, through the fact that we have adopted a standardized procedure and that procedure is what the defense attorneys have come to know and understand that they would have to attack if it isn't followed.

Alderman Jaffe said, okay. And then maybe just to help with some context, I mean, are there other examples of...sorry...to help with a little context, are there other examples that you can think of similar actions, you know, where your officers are engaging a person and...I see it as sort of like their failure to cooperate, is in itself a crime, I was trying to think of other ways to put it in context.

Police Chief Muir said, the only possible way, Mr. Jaffe, that I can kind of think of as a way, I mean, it's more of an overt step but for example if myself or one of our officers were to contact an individual and make a request of that individual to provide us with their name and identifying information and what they're purpose of being in a certain place is, there is a state statute called "Stop and Frisk" that permits that information to be gathered. So, for example, if the individual were to refuse to provide that information, they could be charged with obstruction of a peace officer. Now a slightly different twist on that is they could actually because the information of their name and their date of birth may lead to an arrest for a warrant, outstanding warrant, or some other type of thing, it could...it's possible that the individual would actually conceal their identity by lying to a police officer. Again, that would be proof of obstruction of a peace officer.

Alderman Jaffe said, that wasn't so good. I like that even less. Alright, thanks.

Acting Mayor Childers said, thank you. Anyone else? Mr. Wilkins?

Alderman Wilkins said, so in what you just said if a person does that, they automatically aren't a criminal right then because they still would have to go to trial and you'd have to prove that, is that correct, that they were obstructing justice? So it doesn't automatically make them a criminal right on the spot because they did that.

Police Chief Muir said, we'll have to prove that they refused the test also.

Alderman Wilkins said, you'd have to prove guilt. This ordinance is already telling you you're guilty just for saying no. You get a misdemeanor offense even if down the line you get proven innocent of DUI, you still have that misdemeanor offense. Is that correct?

Police Chief Muir said, no, Mr. Wilkins, it is an additional charge that will be levied against the individual in reference to their criminal proceeding. It would be possible for an individual to be found not guilty of refusing a breath test.

Alderman Wilkins said, I don't read that in the ordinance anywhere where they have a chance to go to trial on not taking a breathalyzer.

Police Chief Muir said, it's a misdemeanor criminal offense that an individual would have an automatic right to be heard in a court of law, Missoula Municipal Court, reference that charge.

Alderman Wilkins said, okay, thank you.

Acting Mayor Childers said, so let's...Mr. Nugent, would you address that as well please?

City Attorney Nugent said, any person charged with any offense always has the right to go to court and you always have the ability potentially to be acquitted of the charge that has been filed against you. That's the same with respect to this offense. If you were charged or issued a citation, just like the DUI, you would be able to go to court and challenge that and you could be acquitted. It's not an automatic conviction. Only the judge can convict. The police officer cannot convict when he issues the citation.

Acting Mayor Childers said, Mr. Wilkins, anymore? Okay. Anyone else on this proposed amendment? It's an amendment to change what we currently show in the ordinance which is a misdemeanor criminal offense, change that to a civil offense. Is there anyone in the audience who'd like to comment on the amendment? Just the amendment to go from misdemeanor to a civil offense. Okay, we'll forward on that

proposed amendment. Is that the very subject you wanted to talk about...the misdemeanor versus the civil offense? Okay, we'll get there. We'll still get there. I still have to talk louder. Okay, let's vote on the proposed amendment. A voice vote.

## **AMENDMENT**

Alderman Wilkins made a motion to delete the misdemeanor offense and keep it a civil penalty.

Upon a voice vote the motion failed.

Acting Mayor Childers said, I thought the no's had it. Do I have disagreement? I do not. The amendment did not pass. Back to the original proposed ordinance. Any further Council comments or proposed amendments or such on the original proposed ordinance? None. Alright, let's have community comment. Please step up to the mic, state your name. I hope the thing is turned on.

James Sheels said, I'm a resident of Missoula. I have a problem with the breathalyzer in that it means you're guaranteed a right under the Constitution Montana law, to freely refuse but you've got to pay \$500 to refuse. Doesn't that come under the 14<sup>th</sup> Amendment Civil Right Violation? And that also takes away the immunity from the City Council, you could be liable for that.

Acting Mayor Childers said, I can tell you that we've through that extensively and the answer that we've come up with is no it does not.

James Sheels said, think I could give this to the City Attorney?

Acting Mayor Childers said, you could give it to the City Clerk and she'll get it to everybody.

James Sheels said, okay. The other problem I have with breathalyzers is that breathalyzers do not measure blood alcohol, they estimate blood alcohol. There's no instrument out there that measures blood alcohol.

Acting Mayor Childers said, okay.

James Sheels said, even the one we have.

Acting Mayor Childers said, thank you very much. Further comment on the proposed ordinance? Good evening.

Nancy Wilson, ASUM Transportation, said, I'd like to...I have no problem with your ordinance but I do want to take this opportunity to suggest to you all that part of the problem for DUIs is that people in this community and in many communities in Montana in particular, being a rural state, have no option or feel they have no option to driving drunk. We...our cab companies are regulated by the PSC and so we do not have enough cabs at this point, at 2 o'clock in the morning if anyone of you would like to test this, you could call the cab and see if you can get one. So, check that out and also it would be a great, in the future, if we could consider looking at taxing alcohol, which obviously is a state issue, to offer transit or transportation for people so that they may not make that option. We run a late night bus from south campus to downtown and back. It is well used. It has kept a lot of students in college, I'm positive, because a DUI is very expensive and adding another fine to a person who gets a first-time DUI is very, very expensive, as we will know, so are the consequences of driving drunk. But it's just something I think that is really important for us all to think about that in a rural state...if you're in New York City, there's a cab, you can grab a cab. If you're in some urban area, there's a way to get home but in Montana sometimes you may have had a designated driver who forgot they were the designated driver, who started drinking about midway through the night and then they say, I think you're less drunk than I am so how about you drive home. So, anyway, as long as we can offer people an option, I think that's an important thing to keep in mind, and thank you for letting me give comment.

Acting Mayor Childers said, thank you, ma'am. Further comment on this ordinance? Howdy.

Alex Taft said, I'd like to speak in favor of the ordinance. There are over 40,000 Americans killed in highway crashes every year in America and 30%, 30% of those are connected to drunk driving, so I think any stick that you can put before those who are tempted to drink and drive or who are sick and they're driving drunk will help lower that statistic and make our highways more safe. Thank you.

Acting Mayor Childers said, thanks. Further comment anyone? Hello.

Robby Levin said, I live here in Missoula and first I want to thank you very much for your intention with this because drunk driving is indeed a terrible thing. However, I do have some constitutional concerns about this, which I gather you might have discussed before but I believe a breathalyzer test would be considered a search as defined by the Fourth Amendment and it would be one's right to refuse such a search under the Fourth Amendment. And it's my concern that a penalty or the threat of a penalty for refusing such a search would coerce one into giving away one's rights unnecessarily and so again I've got very strong reservations about this bill. In other situations where a search can be performed against the will of the person who's being searched, it has to be done with a warrant by a judge and so I'd like to suggest that that might be a possibility, but in any case I'd you guys to very much consider the Constitutional ramifications of this. Thank you.

Acting Mayor Childers said, thank you very much. Anyone else like to speak to this ordinance? Mr. Fellows, I think it's your turn.

Mike Fellows said, I live here in Missoula. I do have concerns about this bill. I tend to think it's a revenue enhancement bill because what we're saying is we're going after the social drinkers that are 1.80 and if you look at the National Highway Safety Traffic and some of their stats from 2006, say most of the problem drivers are the ones that have no drinks at all or ones that are .04 and above. So there are...and I do think there are some civil liberties involved here. The breathalyzers of course aren't accurate. We're not arresting these people until we take them down to the Police Station, get them on the regular intoxalyzer which, according some experts, there are still some software problems on that and if it did go to trial you'd have to have the software, whoever calibrates so things show up and deal with that also. And so I just don't think this is going to work. I mean when the legislature decided we did need reasonable and prudent, we needed a numerical speed limit, they said it would pass this law. Certainly the accidents and the fatalities on our interstate highways and stuff will go down but that hasn't happened, so I look at those kinds of stats and say laws don't work. We do have to look at our civil liberties. We can't just automatically turn, pull over for no reason at all, which I think happens more often than we think as I've met several people who have been pulled over for working taillights, and that can be a problem sometimes. Thank you for your time.

Acting Mayor Childers said, thank you. I appreciate you mentioning reasonable and prudent. I hadn't thought of that for some time. Is there any other comment on this ordinance? Good evening.

Whitney Kimble said, I am a resident of Missoula. I have a quick clarification point that I feel like was a bit unclear between the conversation of the Police Chief and the City Attorney and Mr. Wilkins. It was seemed to be implied that one has the right to go to court to contest this criminal charge but I'd like to clarify that when you go to court to contest the charge, you are contesting whether or not you actually submitted, or whether you refused to submit to the breathalyzer. Is that correct? Mr. Nugent? Should I repeat the question? Okay. I would just like to clarify that in the point that you and the Police Chief and Mr. Wilkins were discussing earlier between the civil and criminal offense, that one when they go to court to dispute this criminal charge, you would actually be disputing whether or not you submitted to the breathalyzer or not, whether or not you refused the breathalyzer, not your actual innocence as to whether or not you were drinking. Correct?

Jim Nugent, City Attorney, said, that would be one of the incidents. In order to be charged with the offense the facts are going to be presented just like they will be for the DUI and the facts will be presented and all the actual circumstances leading up to it that lead the officer to make the request.

Whitney Kimble said, because the charge is...

Acting Mayor Childers said, what you're talking about is the charge of not submitting to the breathalyzer. Right?

Whitney Kimble said, right and that charge itself. That's my question.

Acting Mayor Childers said, and I believe Mr. Nugent would agree that that charge is the one we're talking about here.

Whitney Kimble said, right. So it has no relation to whether or not you have been actually drinking or not and specially whether or not you refused the breathalyzer. I think that's the issue that Mr. Wilkins was trying to bring up and I think that was a bit dodged.

City Attorney Nugent said, as I just indicated the officers will have to have probable cause information that they suspect that the person is under the influence of alcohol, after going through all the steps that Police Chief Muir just indicated, before they have probable cause to make that request. So, yes, there's going to be ample evidence of alcohol or some influencing factor before they ever make such a request.

Whitney Kimble said, okay, thank you very much.

Acting Mayor Childers said, thank you. Is there further comment on this ordinance? Just one time, sir. Anyone else like to comment on this? Howdy. Go ahead.

Adam Pensek said, I'm a City resident and I've heard a lot about having to blow and stuff like this in this ordinance but I've also heard that it has also...taking blood is part of that, you know, for a drug thing and I was wondering how that would be taken, whether that would be done in the field, whether you're brought into the jail or the hospital or wherever, you know, who's taking your blood, you know, what are the concerns as far as sanitation and stuff like that. And then as well I would like to bring up the Fourth Amendment issue there too. Thank you.

Acting Mayor Childers said, okay, we'll get the answer to your first question. Is there further comment?

Orin Johnson said, I'm a resident of Missoula and I do strongly support this ordinance if it would just possibly deter one person, save one person's life, I think it would be worth it. Many years ago in the Air Force I had two good friends, both drunk, both racing each other, one made it home alive and one did not. Thank you.

Acting Mayor Childers said, thank you, sir. Further comment? No further comment. Chief Muir, would you answer the question about where blood might be taken?

Police Chief Muir said, yes, Mr. Childers, I'd be happy to although I will quickly point to the fact that nothing in this ordinance will actually cause an individual to suffer a physical search. We won't physically take a person's breath from them. We won't physically take blood from them.

Acting Mayor Childers said, okay, Mark, just answer the questions please.

Police Chief Muir said, okay. Well, but the point is if they refuse, we won't take blood, period, okay, with the exception of having the opportunity to take it for other reasons. So all blood draws are done under the care of a physician at one of the local hospitals.

Acting Mayor Childers said, thank you very much. Alright, we've had public comment. Jason?

Alderman Wiener said, thanks. I'm not on the committee and so I just wanted to explain the vote that I'm about to make. I have during the deliberations on this not been convinced that this will actually reduce the incidents of people who decide to drink and then get in their car and drive, which is the issue. And it's troubling to me that those aren't the steps we've been taking. During the DUI panel, Chief, you said you could set up a DUI checkpoint on any Friday night with no overtime and that's what reduces the incidences is people's fear that they're going to get caught. So that said, I don't think we should be making it easier to get away with making the poor choice. And I've talked to lawyers and everyone says that, take a breath test and you increase your chances of getting caught. And I'm not worried about the Fourth Amendment issue. I've given it thought and I'm with others who believe that this is, by the time you get to this, you have reasonable suspicion and probable cause to warrant the taking of the breath test

and so I guess when it comes right down to it I feel like sometimes what we're asked to do here is simply take sides and I have to take the sides of the people who are trying to keep us safe, and so I'm going to vote for this.

Alderman Wilkins said, well, I hear what everybody's saying but I think this ordinance raises substantial concerns about its constitutionality. Montanans enjoy the right to be free from unreasonable police searches and I think it's been well established that they can attest that a blood sample is a search under the Fourth Amendment of the United States Constitution. And I also think that threatening to be charged a person with a crime unless he or she submits to a test calls into serious questions whether the person consents would ever be voluntary or not so, you know, I just think refusing to waive a Constitutional protection should never become a criminal offense, so I won't support the ordinance as is, I do support the increased fine of \$500 in the ordinance. I'd even endorse taking the vehicle away. We talked about that a little bit but that didn't come in this ordinance neither. But I still believe in the rights of people and I think this is invading their rights and I won't support the ordinance for that reason.

Alderwoman Walzer said, I've been pretty much convinced from the information our City Attorney's given us from rulings from the U.S. Supreme Court, from the mid-60's and a court that I'd like to thank is a court that really is supportive of civil rights and their belief that this is not something that would be...impinges upon people's civil rights, although I really would prefer it to be a civil fine, matching the fact that losing your license for refusal is a part of your contract with the state. So I'd like to match onto that. I personally think this is, although this may be low-hanging fruit, I think it's at least affective in solving anything involving drinking and driving. The cost to fight a DUI, whether you blow or don't blow, is extraordinarily high. A DUI has lots of financial implications even if you don't fight it and long term implications so this is something that...and there's no proof that these kinds of ordinances and penalties do anything to reduce whether or not someone's going to drink and drive or what's considered the problem of repeat offenders. What does help with repeat offenders is some sort of treatment court and I really think that we need to move in that direction and move rapidly and not do these piece...not approach this as a piecemeal fashion. I really don't think this is going to change one iota of the number of DUI arrests or those people who are drinking and driving but DUI courts are shown to do that, and we don't have DUI courts here. It's a new model. It's the treatment court where someone is responsible and it's a very involved and very expensive. Billings is going through the experiment. They've got a \$500,000 grant to do it but there's a great cost to our community for continued problems with drinking and driving. So I hope that in the passing of this is our commitment as a Council to go forward and find additional methods and ways to deal with drinking and driving, and this is not...we can't just walk away at this and say, up, you know, we did it, we're good. This is the first step and we rapidly move forward trying to find ways within our community of funding the kind of court system and treatment system that is definitely here in Missoula.

Alderman Haines said, Mr. Strohmaier, did you write this?

Acting Mayor Childers said, Mr. Strohmaier, did you write this?

Alderman Strohmaier said, in conjunction with the City Attorney's office.

Alderman Haines said, I congratulate you, it's much better written than the last ordinance you brought before us. There's no duplication, no innuendo. I think this strikes at the heart of what we're trying to do. I was sitting here thinking about listening to the radio today, where we had somebody, it was last night, driving the wrong way on the Interstate and they were talking about the cars going into the ditch trying to get out of the way, and I thought for crying out loud, somewhere, somehow we've got to get a handle on it. We worried about somebody being designated as guilty here and it may cost them a lot of money to prove that they're innocent yet we just passed an ordinance where we put on the shoulders of the person that is under discrimination, and said you may have to take the cost to prove you were discriminated against. I don't understand the reasoning. This looks good to me. I think it's well written. It's clear and from what I've heard from Mr. Nugent and the Chief, I would place the bet...money on the bet that this will pass any challenge in court. I call for the question.

Acting Mayor Childers said, call for the question is non-debatable.

## **MOTION**

Alderman Haines made a motion to call for the question.

Upon a voice vote the motion carried.

Acting Mayor Childers said, I believe the ayes have it. The question has been called. On the main motion we've had public comment.

City Clerk Rehbein said, point of order.

Acting Mayor Childers said, point of order is...

City Clerk Rehbein said, from the City Clerk. For the record, who made the motion to call the question?

Acting Mayor Childers said, Mr. Haines made the motion to call the question.

City Clerk Rehbein said, oh, okay, thank you.

Acting Mayor Childers said, see, you've got to speak louder, Dick.

Alderman Haines said, roger that.

Acting Mayor Childers said, Ms. Mitchell, do you have a point of order?

Alderwoman Mitchell said, yeah, could we have a show of hands? I mean we tried this before and...

Acting Mayor Childers said, Ms. Mitchell would like a roll call vote on calling of the question.

Upon a roll call vote, the vote on the motion was as follows:

AYES: Childers, Haines, Hellegaard, Marler, Strohmaier, Wiener, Wilkins

NAYS: Houseman, Jaffe, Mitchell, Walzer

ABSTAIN: None

ABSENT: Rye

Motion carried: 7 Ayes, 4 Nays, 0 Abstain, 1 Absent

Acting Mayor Childers said, the question has been called. We're on to the main motion. We need a roll call vote on the main motion.

City Clerk Rehbein said, now we're back to the regular and the emergency ordinance on both ordinances.

### **EMERGENCY ORDINANCE 3429 and ORDINANCE 3430**

Alderman Strohmaier made a motion to adopt an emergency ordinance and regular ordinance amending Missoula Municipal Code Title 10, entitled "Vehicles and Traffic," by adding Chapter 56 entitled "Refusal to submit to alcohol and/or drug tests" and enacting sections 10.56.010 through 10.56.030.

Upon a roll call vote, the vote on Emergency Ordinance 3429 and Ordinance 3430 was as follows:

AYES: Childers, Haines, Hellegaard, Houseman, Jaffe, Marler, Mitchell, Strohmaier, Walzer, Wiener

NAYS: Wilkins

ABSTAIN: None

ABSENT: Rye

Emergency Ordinance 3429 and Ordinance 3430 carried: 10 Ayes, 1 Nay, 0 Abstain, 1 Absent

Acting Mayor Childers said, the motion passes. The emergency ordinance takes place, takes effect now. The regular ordinance takes effect in 30 days.

### **Public Works Committee**

[05/05/2010](#)

- [Resolution](#)—Adopt a resolution of the Missoula City Council commenting on the Montana Department of Transportation's Kearsarge Module Transportation Environmental Assessment and requesting the heightened level of scrutiny afforded by an environmental impact statement conducted under the Montana Environmental Policy Act and the National Environmental Policy Act.

Alderman Wiener said, I move that we adopt a resolution commenting on the Montana Department of Transportation's Kearsarge Module Transportation Environmental Assessment requesting the heightened level of scrutiny afforded by an environmental impact statement conducted under the Montana Environmental Policy Act and the National Environmental Policy Act, and I'd speak to the motion.

Acting Mayor Childers said, continuation to speak to the motion.

Alderman Wiener said, just very briefly, the resolution here is an effort to encourage the Montana Department of Transportation to adequately review what is intended to be a permanent high and wide corridor through the state of Montana. It highlights the ways in which the scope of the impact examined are underestimated, specifically because of the improper segmentation of the process which is to the benefit of the applicant and to the detriment of Montanans, and also because of the poor quality of the alternatives examined, namely the exclusion of the existing route from the Port of Houston to Alberta. And the resolution offers an adequate...a path to that adequate review which Montanans deserve.

Acting Mayor Childers said, thank you.

Alderman Wiener said, I'd just note that MDT Director Jim Lynch is kind enough to come down and answer questions. We had members of Public Works Committee request that he do so.

Acting Mayor Childers said, we thank you for coming, Director. Questions and comments from the Council? Anyone from the Council have questions or comments? Ms. Mitchell? By the way, I did have you on the last list, you were next.

Alderwoman Mitchell said, I had my hand up several times, but that's okay, that's water under the bridge, so to speak. Now since Mr. Lynch is here, I would like to ask him a question or two.

Acting Mayor Childers said, hi, Director, please introduce yourself. Make sure the microphone is on.

Jim Lynch said, I think it's on.

Acting Mayor Childers said, it's on.

Jim Lynch said, my name is Jim Lynch and I'm the Director of the Montana Department of Transportation.

Alderwoman Mitchell said, thank you for making the time to come over here for our meeting tonight. The questions I have pertain to the Environmental Assessment that was done and whether it included any consideration of other alternative routes? Whether it concerned the creation of a permanent corridor? To me it sounds like we're going to try to land a 747 on the freeway.

Acting Mayor Childers said, Ms. Mitchell, would you like to ask one question at a time?

Alderwoman Mitchell said, yeah. The first one will be is, have we considered other alternative routes and examined those very well?

Jim Lynch said, members of Missoula Council, for one, the action that is under review, under the Environmental Assessment, is the issuance of a 32J. That's a permit that is required by law in the state of Montana for anyone that wishes to haul an over-dimensioned load, which is what these would be, an oversized load. A 32J permit under Montana laws are issued to those that requested the issuance of the permit under the Montanan Environmental Policy Act, is an action that needs to follow the act. So what the Environmental Review established was the movement into an Environmental Assessment to discuss the act or look at the impacts to the act and that's the issuance of a permit and only a permit. And the reason that it was, the corridor is actually selected by the entity in which the direction in which they want to move. Whether they've looked at other corridors or not, I believe they address it in the EA but the action that the Department of Transportation is being asked to do is an issuance of a permit.

Alderwoman Mitchell said, have you had a chance to thoroughly read the EA that was submitted?

Jim Lynch said, members of the Council, yes, I have looked through the EA and we're still accepting comment on that EA until May 14<sup>th</sup>.

Alderwoman Mitchell said, and that was another question I have, do you think that May 14<sup>th</sup> is adequate to, for the public, to submit comments and questions on this? [inaudible]

Jim Lynch said, Ms. Mitchell, under the Montana Environmental Policy Act, that's the time period allowed and how it works is comments come in and there's no decision made until the comment period is closed, the comments then are analyzed and answered. At that point, a determination is made. You can't predetermine that at this point under the Montana Environmental Policy Act.

Alderwoman Mitchell said, I guess I don't know if I should ask this or not but do you have any personal feelings about how practical this might be or not?

Jim Lynch said, yeah, I can't answer that, personally or as the Director of the Department of Transportation. I'm representing the integrity of an environmental document in process called Environmental Policy Act and just as I couldn't ask you that question.

Alderwoman Mitchell said, okay, I understand. Thank you.

Acting Mayor Childers said, might as well stay there, I'm sure we'll find more people to ask you questions. Anyone else down on this end, oh, did you have one more? Okay, Renee.

Alderwoman Mitchell said, are there any provisions in place in case there is some kind of a snafu or something happens that isn't anticipated? Right now we're trying to figure out how to stop oil from the Gulf and we could have unforeseen things or we could even have a protest. This is Missoula and we've seen it before and I could envision 100 people up there lying down on the highway to stop these rigs, not that I would say that people should do that but I think we need to be ready for anything that...this is a highly, highly hot issue, very controversial and I just wondered what provisions are in place for some kind of an accident, a road giving away, axels breaking, a load dumping off into that canyon. I drive that canyon quite often and I just have nightmares thinking about this going on.

Jim Lynch said, Council person, I don't know what's appropriate protocol here, Mitchell and members of the Council, that was a question that was asked and a comment was made so under the environmental document the Imperial Oil will have to answer that question. As far as the other question, what are you going to do with civil unrest; I think you have your law enforcement officers that probably can answer that question. That's not my protocol or forte.

Alderwoman Mitchell said, well, the money that the state will receive to allow these trucks to pass through here, how much of that money is going to be spent shoring up the road and doing the provisions that need to be taken to allow this to even happen?

Jim Lynch said, the Environmental Assessment covers those, it covers all of the areas in which they're going to either have to build new pull-outs or modify new pull-outs and the costs associated with it are in the document. Those are all paid for by the permittee, the person that's actually acquiring the permit. They have to pay that. The taxpayers aren't paying a dime for that.

Alderwoman Mitchell said, and if there's any damage, is that in the assessment too and who would be responsible for that?

Jim Lynch said, yeah, that's a good question. What they'll have to do, prior to the issuance of a permit, they'll have to provide a bond to cover any repair and damage. We'll have to enter into an agreement with them that they will repair any damage that they cause. Keep in mind that we're going through the process now and the size configuration, the number of axels to put underneath the load, not to have any damage, but just in case there is, there are provisions that will require the permittee to pay for those damages and there will be a bond to protect that. Secondly, probably more importantly is the Department of Transportation, if the hauler, let's just assume because I can't...we're not done yet with the comment period where we're way ahead of ourselves, but let's just assume as we walk...if we walk further and someone has issued a permit, that permit can be revoked at any time if the conditions of the permit aren't being upheld. It's not a permit that's given forever.

Acting Mayor Childers said, alright. Thanks. We'll go to the other side. Roy?

Alderman Houseman said, last week an individual commented that you had said that this is for about 200 loads in total but I guess a year before you had mentioned that this would be a permanent corridor. Could you clarify a response to that or...

Jim Lynch said, yeah, that...someone made that comment. What had happened, that was a comment made in front of the Revenue Transportation Committee. This was long before we even got to what we have here today. There was all sorts of requests of establishing a corridor in Montana. That's not what this action is. This action is from Imperial Oil, Exxon to receive 200 32J permits, permits to haul dimensional loads but not to establish a permanent corridor.

Alderman Houseman said, okay, a follow-up. When MDT decided to issue these permits, why did they feel that it was not necessary to do any EIS or any contact those federal regulatory agencies?

Jim Lynch said, members of the Council, Mr. Houseman, actually MDT has not issued any permits. Okay? We've been requested by the company to receive 32J permits and under that action, under the Montana Environmental Policy Act, that requires an environmental review. The environmental review then drives the extent of the document. It isn't something that I can arbitrarily pick or anybody can arbitrarily pick. You have to work through the process that we have in the state of Montana. It's a state action and that's why it's under the Montana Environmental Policy Act.

Acting Mayor Childers said, Lyn and Bob and Jason? Lyn?

Alderwoman Hellegaard said, thank you for coming, Director Lynch. A question I have for you, is there any let's say triggering mechanism that would require either a NEPA or an EIS other than the involvement of federal dollars in this project?

Jim Lynch said, this is a state action and so it doesn't qualify, it doesn't fall under NEPA. It falls under the Montana Environmental Policy Act. Now we still are in the comment period so we don't know what the comments are going to be or what may come out of that but as the process we're in right now, we're under the Montana Environmental Policy Act. I can't predetermine or assume or guess or look into a crystal ball what the comments may be by the time the comment period may come. So, there's no way I can give you that answer.

Alderwoman Hellegaard said, so, you're saying that there might be a comment in there or a group of comments that would trigger an EIS on this?

Jim Lynch said, no, I'm not saying that. I'm saying we have to wait until the comment period is over. Right now we're under...I know the question you want to ask, is there anything that can push this to a

NEPA? Under Montana law, what we've see and what's been requested of us in the action that we're taking, we don't see anything.

Alderman Jaffe said, okay, a similar question I want you to elaborate a little bit more on that, that's a point of confusion for me as far as what, how it's decided when one activity would be a, you know, in the EA instead of an EIS, where the line gets drawn, and I understand inclusion of federal dollars in the project is one of those things but what are the other things that do that? Why are the comments even relevant at all in the answer you gave to the last question? You know, is there some...how does that decision get made, by who?

Jim Lynch said, under the request, if you look at, if Montana did not have a Montana Environmental Policy Act, there wouldn't be an environmental document. That's what's going on in Idaho right now. But Montana has an Environmental Policy Act which governs actions taken by states and they identify those actions, and one of those actions is the issuance of a permit, so that's why we're in the MEPA process. You, as a City Council or a city action amongst yourselves, I'm not an expert in this but I don't believe you have to abide by MEPA but the state does. So this is a state action.

Alderman Jaffe said, I understand this is a state action. My question is, what makes something a federal action?

Jim Lynch said, for example if we were to rebuild a highway that involves federal dollars, that would require a federal action.

Alderman Jaffe said, so that's the only thing that ever becomes a federal action is...

Jim Lynch said, I don't know if that's the only thing but in our business and in our world, under the Department of Transportation, the building of a highway with federal dollars would be a NEPA process.

Alderman Jaffe said, okay, and my other question is back again to one that was asked earlier about the difference between this being a permanent corridor and now being just the 200 loads, what actually changed in the proposal? I mean is it simply they filled out a different document, you know, a form for their proposal? I mean what's different about what they were proposing before and what they're proposing now?

Jim Lynch said, well, let me make it real clear. They never proposed it before. What they...the only action that they've asked the Department of...they may have discussed it, they may have talked about the benefits of a corridor, but what the action the Department of Transportation is taking is the request for a 32J permit. That's the action we're...that's what we're acting on. We're not acting on a permanent corridor.

Alderman Jaffe said, okay, and there's no provisions for the Department to look beyond what a permit request is? I mean, as far as...it sounds like you're extremely...your hands are just completely tied when someone tells you what it is you're allowed to look at, that's what you look at and you don't think outside of that. And is there a broader process? You've got something going on here, we all know what's going on, is there anything beyond which permit they apply for that you're allowed to even take into consideration?

Jim Lynch said, yeah, well we have to work within laws of the state of Montana and that the action was they want...they would like the state of Montana issue a 32J which is in law. We have to issue a 32J. That action requires a Montana Environmental Policy under the Montana Environmental Policy Act and environmental review. That drives your environmental document. That is it. I can't, as a state official nor can any state official, assume or presume something beyond what is being asked of us and the action that we're taking.

Alderman Jaffe said, alright, thank you.

Alderman Wiener said, what's the amount of the bond that's going to be required for road damage?

Jim Lynch said, we don't have the total amount yet. That will be determined.

Alderman Wiener said, okay. Under what conditions will the bond be returned?

Jim Lynch said, that we can do, we have a capability, the Department of Transportation, is we can actually analyze a road, go out and take a look at the road condition prior to the movement of loads. We can calculate what impact that load would have under the normal traffic, average daily traffic count that that road has and then look and see after the haul has been done if damage to that roadway is greater than what would normally be decided, it would normally have operated under normal condition without these 200 loads at which time then we would make a claim to the company. Keep in mind that if we see damage prior to that, we can revoke the permits. We don't have to wait until 200 loads have hauled across the roadway.

Alderman Wiener said, sure. So what affect does a half-million pound truck have on a bridge that's built for regular traffic?

Jim Lynch said, actually what you...when you look at the bridges across the state...first of all they have to give us that information as far as what the weight is going to be, how many axels they're going to have, what tire width and what weight per square inch is going to be on that load as it crosses the bridge. It goes to our bridge engineers to calculate whether or not that structure can handle that load that goes over there. Bridges are built...a lot of the bridges that are built across the state are built for a continuing flow of traffic and continuing size. There are oversized, overweight loads that cross our bridges in the state a lot of times. I mean, this is not something that is new, never done before and none of those loads can cross the bridge if it's detrimental to the bridge. That's something we, our engineers have to calculate.

Alderman Wiener said, sure. Well, I don't hold my breath for getting bridges built around here. I'm more worried about the pavement, the roads themselves. So in July, 2009 you presented to Revenue and Transportation and you titled your presentation "Proposed High Wide Corridor Briefing." So what was the entity that was doing the proposing there?

Jim Lynch said, actually what I was advising the Revenue and Transportation Committee, and it was given to them as an advisory that this is a proposal or an opportunity that has been placed to the state of Montana, something that we in the Department of Transportation, between now and the next legislative session is going to have to deal with. There was actually four different meetings so without actually seeing which meeting you're talking about, there's actually four different meetings in which this was discussed from the Revenue Transportation.

Alderman Wiener said, well, as it happens, I've been on the Internet and I brought some clips from the meeting. Oh, the Internet. "Put it back into its original position so they'll do that once prior to moving all this equipment. And I think the idea here is...and when we make this decision at DOT and I think this is why it's very important to involve the communities is we are actually setting the stage for a high wide corridor through the state of Montana to be used probably for things that we haven't even imagined yet. Who would have imagined this would be proposed? Can we only think what might be coming down the line?" So, when I heard that, it led me to believe that what we're looking at is a high wide corridor that's going to be set the stage for, by these permits, when I was watching the presentation today, I didn't see any of the specifics of what was being discussed there in terms of the turn-outs or the route or really anything that was different from what's in the 32J permit. So I feel like the people of Montana are kind of getting short shrift on this and that Exxon is getting a pass.

Jim Lynch said, well, Mr. Wiener, actually if you'd look at the...if you'd watched the whole presentation, I actually handed out a document that was...this was discussing. It actually showed their route. This was prior to any request, any official request for a 32J permit or a request from an entity to establish, have the state establish a high wide corridor. The state of Montana is not establishing high wide corridor and that was what I was addressing here to the Revenue and Transportation. It's not an action the state of Montana is taking. We did not go before...we're not...this document isn't the Department of Transportation asking the state to establish a high wide corridor and that's what I was talking about at that particular meeting which was very early on. The haulers in the meantime have decided they do not want to establish a high wide corridor. Exxon tells us they're interested in moving these 200 loads and that's what they need the 32J permit for.

Alderman Wiener said, if they were establishing a high wide corridor that crossed three state boundaries, two international boundaries and included using federal stimulus money to expand a port, do you think that would constitute federal action that would require review under NEPA?

Jim Lynch said, that's a hypothetical. You talked about federal dollars...

Alderman Wiener said, it doesn't look very...

Jim Lynch said, if you talk federal dollars, you're probably correct but I'm not...I couldn't tell you that.

Alderman Wiener said, yeah, I mean in one sense it's a hypothetical and in the other sense it's what's happening if you zoom out.

Jim Lynch said, yeah.

Alderman Wiener said, and so that's why I have asked the Council and the City to take the position that a NEPA review is required.

Jim Lynch said, and that's a comment that you're more than welcome to make to the process. You can't make comments to me but you can make it to the environmental document.

Alderman Wiener said, yes, sir. Thank you and thank you for coming down.

Acting Mayor Childers said, thanks, gentlemen. Jon?

Alderman Wilkins said, I'd like to thank you for coming too, Mr. Lynch. That was probably a little bit above and beyond so...

Jim Lynch said, I don't mind at all.

Alderman Wilkins said, my concern is I did travel down Lolo Pass today and I noticed how close the river is to the highway and also noticed where it wasn't really close to the highway was wetlands and the 10-minute rule, so I was wondering how this study when they do the turnouts in that area there, they're going to be close to wetlands, close to the river. Also going down the Blackfoot, you can get pretty close to wetlands, especially when you get through Potomac and you start up on your way to Lincoln there where the trees and everything, the river is pretty close. What did your impact study show when they get close to these rivers and the wetlands in there? Is there going to be impact to the rivers?

Jim Lynch said, in the Environmental Assessment that the engineer, Tetra Tech developed for that particular stretch of roadway, actually for all of it that it does not impact...their proposed modifications existing pullouts or the ones they will build will not impact wetlands. They actually have a detailed map. If you actually...

Alderman Wilkins said, I've seen the map, yes.

Jim Lynch said, you can actually look at where they propose...in fact Lolo from the Idaho state line to Lolo I quickly looked through it, I think they're using 15 existing turnouts and I believe only one new turnout in that stretch.

Alderman Wilkins said, well, and I saw that too but seeing those turnouts today I'm not quite sure how they would handle a rig of that size and actually met large rigs that took about their whole lane and a good section of the other lane. And the curb, just for me to pull over to let them pass was only like two or three foot and then there was the river right beside me. So I'm not...I'm sure they're going to have to redo those. The ones that are existing, they're going to have to make them a little longer and a little stouter and I guess that concerns me, what it's going to do to our rivers and that, but anyway that's my opinion. But the other question I have is, when are they going to start this? Are these 200 vehicles, are any of them going to be running during the winter time or during late fall where we could get sudden snow storms and they could be nice and sunny one day and trapped the next day. I'm concerned about that. I'm concerned about what they're going to use for traction if it becomes icy and how that's going to affect the...has that been looked at in the study?

Jim Lynch said, yeah, those would be great comments to make to the document. However, to answer your question is, is they are planning to move 200 loads across in a one-year period of time. So, obviously, they're going to take into consideration whether, when necessary, different events. It's addressed in the Environmental Assessment but if you have concerns on whether traction, whatnot, those are great comments to make to the document which then the company will have to answer those comments.

Acting Mayor Childers said, thank you. Dave?

Alderman Strohmaier said, thank you, Director Lynch for making the trek over. While issuance of a 32J permit may require completion of an EA, what if any discretion does the Department or the state of Montana have in terms of, based on the level of controversy or initial scoping to move directly into an EIS as opposed to simply satisfying the minimal requirements of completing the EA?

Jim Lynch said, we have to follow the Environmental Policy Act so whatever, and we won't know what that is until the comment period is closed and what comments we receive and what...and how they're going to address those comments. So I imagine...I can't predetermine anything but that's what the process works. We start with an Environmental Review, we've moved into an Environmental Assessment, they did their Environmental Assessment, they've noted what impacts there are, if any, what they're going to do to mitigate them and now they're available for the public to comment on. Based on what we receive in comments will drive what we do in the future, but at this point I couldn't tell you that. I couldn't predetermine that.

Acting Mayor Childers said, thank, Dave. Dave, you just did it. Marilyn?

Alderwoman Marler said, thanks for coming over. It has helped me understand a little bit of what's going on with this process in a way. I do appreciate you being here in person. I'm absolutely going to vote for the resolution that's before us because I really think that the EA is inadequate even if we could all agree that all they had to do was the EA to get the permit, the EA itself missed a lot of things and so I'm glad that we're making those comments. The project as a whole probably needs an EIS but the EA to get the 32J permits is inadequate. It did not address a lot of things that we had. That's not the question. Are we still on questions or are comments okay too?

Jim Lynch said, you can make comments to the document, not to me.

Alderwoman Marler said, oh, I'm asking the Chair. Anything? Questions and comments.

[inaudible]

Alderwoman Marler said, procedural question...

Jim Lynch said, I do want to make that very clear...

Alderwoman Marler said, oh, I know.

Jim Lynch said, because we have an environmental process here and you and I can't afford to jeopardize that so the comment period is in place. The comments must be made to the Environmental Document and there's a process for doing that. If you have technical questions of me or the department, those are some questions I may be able to answer tonight or if I can, I can get them to you. That's really all I can do.

Alderwoman Marler said, I understand that. I had a question for our Chair about our procedures.

Jim Lynch said, okay.

Alderwoman Marler said, sometimes we're only allowed questions, sometimes we're allowed both. I guess we're allowed both. So I'm going to vote for the resolution, that the EA is inadequate. It didn't address a lot of things. Also, now that I better understand this whole situation with the 32J permit, I'm

absolutely going to be submitting a comment to the document tomorrow, first thing, to recommend that the Department of Transportation deny the 32J permit. That's what I'm going to do and you've mentioned that people can do that until the 14<sup>th</sup> and the comments go to the process, not to you, not to us here on City Council and I was hoping for the record, I have it on my computer here, but for the record could you say where people should submit that?

Jim Lynch said, I think I can do that. Yeah, they can submit it to [www.mdt.mt.gov](http://www.mdt.mt.gov) and just submit it as a comment for the Kearsarge Module Transportation Project Environmental Assessment Overview.

Alderwoman Marler said, wonderful. Thanks for clarifying that. Thank you.

Alderman Houseman said, when you guys go to issue these 32J permits, when did Exxon Mobil come to you and ask for the...?

Jim Lynch said, it's approximately been about a year now.

Alderman Houseman said, a year? So once the corridor is established, let's say Conoco Phillips decides to get some 32J permits, will they have to go through this EA process again?

Jim Lynch said, yes, they would.

Alderwoman Mitchell said, when people apply for the 32J permit, it's because what they plan to transport is oversized or overweight or both? Is that correct?

Jim Lynch said, yes, it's covered under statute. It's a non-divisible load so it has to do with width, height and weight. It could be any of those.

Alderwoman Mitchell said, so if it exceeds those limits, then they need to get the 32J permit?

Jim Lynch said, that's correct.

Alderwoman Mitchell said, but there are no upper parameters. It's just they see this, they have to get that permit but the permit doesn't allow them to go...it has no upper limit.

Jim Lynch said, they actually have to in their application for a permit spell out their dimension and their weight and that's all that...and they can't exceed that. Can I make a clarification? They have to go through the Environmental Review and that drives what document...I think you said, did you say Environmental Review or Environmental Assessment? Yeah, they have to start with the Environmental Review. The action that we would take, I apologize, I just want to make sure I didn't forget that if someone requests a 32J, the action the Department of Transportation has to take is issuance of the 32J permit and that starts the Environmental Review. That drives the extent of the environmental document. I'm sorry, Ms. Mitchell.

Alderwoman Mitchell said, thank you and one of the comments I hear quite often is that this will provide jobs for people in Montana and as we know jobs are really important, especially around this neck of the woods with our mill closing down, but is there anything in the EA that says Montana people will be employed to do this work? How much...

Jim Lynch said, I don't recall, I'll have to go back and look at it. I do know that they testified in Missoula that they would hire Montana contractors to do the work. I know that was the testimony of Imperial Oil but whether it says it in the document or not, I don't know.

Alderwoman Mitchell said, thank you.

Alderman Wiener said, on the subsequent environment review, if a 32J permit came in and proposed using a corridor in which all the necessary turnouts already existed, would there be any need for any further environmental review?

Jim Lynch said, it would really depend...it would depend...I have no idea...I'm not going to ask, go into hypotheticals with you, okay? If they want to issue [inaudible].

Alderman Wiener said, you answered his hypothetical.

Jim Lynch said, well, his hypothetical was a little bit different. He's asking me if you have to issue a 32J permit, do you have to go through the environmental review. That's not hypothetical. That's the law, yes. You're asking me if all of this took place, I couldn't answer your question. I would be...I couldn't give you the answer to that question unless I know what exactly what they're asking.

Alderman Wiener said, okay.

Jim Lynch said, remember, keep in mind what we're doing here is an action of the Department of Transportation. Okay? And the action that's being asked of us is to issue a 32J permit. That's the action under review.

Alderman Wiener said, and Exxon would probably take a dim view of any wider construct at their request?

Jim Lynch said, say that again?

Alderman Wiener said, I think Exxon would take a dim view of any wider construct of their request.

Jim Lynch said, I guess I don't understand that question.

Alderman Wiener said, I'm thinking they probably would take offense if you said what you're asking for is a corridor and not an oversized load permit. I'm trying to give you the benefit of the doubt here on what the scope of the review is, what it is.

Jim Lynch said, I have to...we have to...the Department of...the state of Montana has to do what we've been requested. We can't predetermine what someone's intent might be. Their intent and their action was to ask us for 32J permits. Okay?

Acting Mayor Childers said, Pam?

Alderman Wiener said, that's their stated intent.

Acting Mayor Childers said, oops, sorry.

Jim Lynch said, that's their request of us, issue a 32J permit.

Alderwoman Walzer thank you for coming in. I apologize if I missed an answer to this question. We have the luxury of having Internet and trying to, you know, search for things so I've been looking at the MEPA, our MEPA policy and the EA, EIS so my first question is, ultimately there's one person who makes the decision of whether or not the EA is sufficient and whether or not an EIS is called for. Am I right on that?

Jim Lynch said, not really. What it is we have to make the determination, MDT, and we'll use all the resources that we have to make that determination but that determination is going to be ours. Now you can challenge that determination, anybody can, but the Department of Transportation is the entity that issues the permit, not a individual.

Alderwoman Walzer said, okay. What I was trying to get to the point is that, you know, ultimately are you the one that's going to be issuing...the EA is sufficient, we do not need an EIS and the preferred alternative is that's laid out with all the mitigation that's laid out in the EA or all of those things that were modified to the Department's satisfaction, that's yours or can you determine that the EA is not sufficient and that an EIS is necessary?

Jim Lynch said, as I said, the Department of Transportation can, I'm not a dictator. Okay?

Alderwoman Walzer said, okay.

Jim Lynch said, okay? Just as your Mayor can't, okay, we have to follow the law and that's what we have to do and that determination will be made by the Montana Department of Transportation. Now am I going to be involved in it? Well, the answer to that question is pretty obvious or I wouldn't be sitting here right now answering questions, or I attended also all three of the public meetings to listen to all the comments, those for or those against. But the decision that is made, the action that is taken, is the State of Montana's.

Alderwoman Walzer said, okay. And, unfortunately, I did something to my computer and lost the page I was on but it does...there was a very simple trying to describe when an EA is appropriate and when an EIS is appropriate. An EIS is appropriate when the EA calls for it or, and they had in quotations "common sense" says that, you know, higher scrutiny is necessary. And so from what we've seen, that the EA says that we don't need to do an EIS but I guess some of us are arguing that common sense from what we have, what we're seeing is that it looks like the EA is insufficient and we need to have somebody step up and say we need more because...appreciating that the Environmental Impact Statement may have enough mitigation put in there that we still, the end result would be the same, maybe with additional mitigation. We don't know the end of what the Impact Statement would put in there but I guess that is kind of what we're...a lot of people are asking for is like what I'm trying to beat around and see if I can get anyone to appreciate that an EA that is being prepared doesn't seem to be sufficient.

Jim Lynch said, and you can make that comment.

Alderwoman Walzer said, and we have and we will. Okay.

Alderman Jaffe said, I thought I was being clear before but maybe I wasn't. So the...what I was trying to just confirm is if there is within the scope of the possible outcomes of the EA, the recommendation that there should be an EIS, whether that's even within the scope of possibilities of the department's authority in the assessment.

Jim Lynch said, actually that's in the guidelines of the Montana Environmental Policy Act, but you can't be arbitrary, there has to be some real reasons for doing so.

Alderman Jaffe said, okay. Can you...?

Jim Lynch said, no, I can't.

Alderman Jaffe said, ...fill out what sort of reason...like what are the types of things that are reasons?

Jim Lynch said, oh, maybe I can. I thought you were going somewhere else, so yes. Say that you, they identified an impact that couldn't be mitigated within the area in which they want the permit, it could be a major impact that it would be substantial. Substantiating impact would drive it to another level.

Alderman Jaffe said, so if the impact was something larger than what was taking place in Montana here? Okay.

Jim Lynch said, no, no, no don't put words in my mouth. The action the state is taking is issuing a 32J and through the Environmental Review process if there was a significant impact identified with the issuing of that permit under that stretch, that could, not would, but could depending on what that impact could be, if it could not be mitigated.

Alderman Jaffe said, okay. The other concern I have...one of my biggest concerns is that they'll just screw things up here and then we'll be left holding the bag. That's ultimately where I'm...what makes me uneasy about the whole thing. So the amount of the bonding is something important for me. I see in the document where it talks about they're responsible for damage to the roadways but is the intent that the bonding or is there even bonding, I guess I haven't seen anything that specifically says that maybe it's in there, but first question I guess is, will there be bonding and if so is it intended to be potentially, you know, for the potential of the destruction of the entire corridor? I mean, like where do you gauge it?

Jim Lynch said, the answer to your question is yes on both accounts and the amount that we'll require will be something that DOT determines is an appropriate level for risk. Keep in mind that, you know, if something happens in load number one and load number two, they don't live up to whatever the conditions were, now I don't want to be pre-assuming anything because we haven't made that decision yet...

Alderman Jaffe said, sure, of course.

Jim Lynch said, okay, you guys are trying to get me in trouble here. If we go all the way to the end and that's what ends up happening, those permits can be revoked.

Alderman Jaffe said, yeah, the thing that I see more...I have confidence in the DOT engineers to measure load, you know, point loads and all that other kind of stuff, do the engineers know that the bridge isn't going to collapse under this thing. What the concern for me more is that the key mode of effects of having these heavy loads, that you, you know, our roads are built and eventually they slowly wear down as we drive on them but, you know, are we causing 25% faster wear and that kind of thing, where it's not immediately obvious that the road has failed but we've sped up the deterioration of our roadways and, you know, ten years from now is when we may have to replace those roads because of the damage. That's more my concern is that there's long-term cumulative affects which will accelerate the deterioration but not outright failure of the roadways. And then also in my hope when considering the effects is looking at some of the secondary things, you know. If we're blocking up the one road, traffic is then going to go to the other roads and those kind of impacts that we'll see at least within Missoula where there are alternate routes. Some of those kind of problems that we might have that we're increasing wear and increasing traffic and increasing, you know, the deterioration of other roads, not just the ones on the corridor. So that's a concern of mine that I'd like...I guess I'll make it as comments later but those sort of secondary impacts are actually being addressed, because it doesn't look like they are, in the document.

Jim Lynch said, well, if you review the document, I mean those are comments you can make and I encourage you to make them, but review the document, when you're talking about loads at 12 o'clock at night, 2:00 a.m. in the morning to 5:00 a.m. in the morning.

Alderman Jaffe said, it's something that's also come up in questions is what about the return trips? Because those would be in the day, right?

Jim Lynch said, that's in the document also and the return trips they aren't carrying as wide of loads so they actually, they have a route and they're coming down Interstate 15 on the return trip and then, of course, they'll come back into Missoula back up over Lolo and over to Lewiston, Idaho.

Alderman Jaffe said, do they need a 32J permit on the return trip?

Jim Lynch said, you know, they may because it depends on what the trailer configuration is when they break down.

Alderman Jaffe said, okay.

Jim Lynch said, if they happen to be wide. They certainly wouldn't be heavy but they could be wide depending on what trailers that they use.

Acting Mayor Childers said, are there further questions or comments from the Council? Questions or comments from the Council? Dave, must raise hand.

Alderman Strohmaier said, I comment not for Director Lynch so if...I'll wait until folks are done.

Acting Mayor Childers said, perhaps we could let the Director sit. Thank you very much for being here and being a good sport.

Jim Lynch said, not a problem. Thanks for inviting me and I encourage you, if you have comments, to make comments by May 14<sup>th</sup>.

Acting Mayor Childers said, alright. Dave?

Alderman Strohmaier said, so first off, I want to thank Jason for his work on this comment that I am fully confident will be submitted. In 1943 Joseph Kinsey Howard wrote his history of Montana or published his history of Montana, titled "Montana: High, Wide and Handsome." In my estimation this proposed undertaking is certainly high and wide but it's absolutely not handsome. I think if anything is befitting of intense scrutiny and the level of analysis required by an Environmental Impact Statement it is a project like this that certainly has the potential to create significant impacts for our community here in Missoula and throughout the state, both short term and long term, so I will fully support this resolution tonight.

Alderwoman Walzer said, yes, I'm going to support both the resolution and for those many who have already provided a comment to us as a City Council and who will be providing, I really urge you to follow the one step farther and make the official public comment to the MDT on this. You can get it through the state website; it's easy to navigate through, through the Department of Transportation's website in commenting on environmental things. I can't remember what the exact terminology was but anyway, but please commenting to us is not official and it helps us make our decision, our resolution will act as one comment, but I hope you all will follow through and go directly to MDT. I'm very glad Jason brought this to us and also included the extra language that I asked him to include about the economic impact that this would have potentially economic impact on our community which all of the same data that I grabbed for that he condensed to something much easier. It just happened to be also repeated in today's proclamation about tourism and travel in Montana. We got it from the same source. It's all available out there for anyone to grab from the Convention and Visitors Bureau, and I'm kind of surprised that's just been ignored in the EA so I certainly hope this goes forward in one that my preference is, is that everything returns to the normal route that would be normally going through from the Port of Houston but at a minimum that this progresses from an EA to an EIS that better identifies issues and what mitigations there might be. I'm hopeful that in the end the decision would be that there's no good alternative through Montana, that they cannot properly or the cost of mitigating all of the concerns are high enough that the company would decide that the existing route from the Port of Houston is more economically feasible. And I don't want to give away Montana's great resources of our scenic views and the economy that we get from all of that, I don't want to give that away for cheap. And, you know, Lewis and Clark had a hard time going over Lolo Pass and using that as the attempted corridor from the east to the west and they couldn't find a good way through. And I just have a really hard time thinking that these trucks are going to find it just as easy...suddenly decide that it's an easy route to take when in reality it is quite difficult.

Acting Mayor Childers said, Roy, did you have a comment?

Alderman Houseman said, actually I have a question for Chief Muir.

Acting Mayor Childers said, gee, Roy, I thought we were done with questions. Go ahead.

Alderman Houseman said, out of curiosity, how many officers do we keep on patrol from midnight to 4:00 a.m. and has the state or anyone contacted you about policing that corridor...Reserve Street during that period of time?

Police Chief Muir said, depending on the night of the week, you're likely to have between five and ten. The only information that I've had to this point is that all expectations of the Police Department would be with respect to any contract work if they were to...so as to a general impact on the City's budget, we've not been asked to provide anything.

Alderman Houseman said, okay, thanks. Overall I support the resolution. I think that it's good that the City of Missoula will make the comment as a city and I encourage citizens to go out and do that comment individually as well.

Acting Mayor Childers said, thank you. Are there more comments? Further comments? Mr. Haines?

Alderman Haines said, I was just running down through the whereas's here and I think Mr. Lynch laid some of them to rest but this Council, I always thought when we do something stupid, we like to tell everybody it's leadership. I think to continue to vote for this resolution after what we've heard from Mr. Lynch is ridiculous. Talking about addressing the creation of a permanent corridor. If that were

proposed, that would take a much greater study and much greater depth than anything that's contemplated here, impacts or otherwise. It talks about doesn't have an adequate consideration of alternative routes. If the company wants to move it, the state has no authority whatsoever to tell them that they have to incur more costs by going a different route. It just is not in our laws to do that. We can analyze what they propose to do, but we have no right to tell them what to do except as may modify the impact on the route they want. And the scoping of the EA was conducted without formal public comment. Well, I then you've heard tonight several times, make your comments and they'll be answered. If the EA fails to weight the cumulative impacts that oversized loads and a high wide corridor, again, I go back, if you're going to have a permanent high wide corridor, that's going to take a lot more study and a much greater in depth analysis. And by the way, the minute that the Lewiston Port came into existence, we started moving an awful lot of traffic over that road and down the Lochsa just hauling wheat. There's an immediate increase in that type of traffic. And the whereas, the EA fails to adequately weigh the incremental losses to Montanans and Missoulians from additional traffic delay. Make your comment. Make them show what will or will not happen. It says the EA does not address where the proposed project intends to direct project employment. There's no law that can do that. You can't pass a law that's going to tell them they have to hire people in Montana. Whereas the EA fails to consider the economic impacts of developing a permanent high wide, that goes back...that's not contemplated. I don't see how you can keep talking about it when it's not what's being asked to do. The proposed high wide corridor cross three state and two international boundaries. The scope of the EA is limited to only one segment of corridor. That's all we can look at because the 32J in the state of Montana we have no authority whatsoever to analyze what might be the impact on Washington or Idaho or into Canada. And I...whereas, due to the improperly limited scope of the EA, it's not improperly limited. It isn't done yet. You can put all your comments you want of this thing and be heard and get an answer back. Whereas MDT is required to cooperate and coordinate with other state and federal agencies to prepare...no, all they have to do is analyze what's on the roads that Montana has jurisdiction over in order to issue a 32J. So you're not going to get any more than that. And then I think it's based on inadequate scope under-evaluator, under-evaluated impacts and failure to coordinate with effect to...you have to prove that or at least bring it out by a question that they are inadequate in scope, that they're under-evaluated. You have the right to do that and perhaps if you're that concerned, you have a duty to do that, but I think tonight we've heard enough about this stuff and how ridiculous some of the concerns are that we have.

Alderman Wilkins said, well, the way I look at this in the EPA study that's being done and the comments, I will be making my own private comments myself but I will support the resolution on principle because on principle I feel a little like that guy must have felt that, in China, what's the square type, I can't say the word but I feel a little like him standing in front of that tank. And, you know, my comment isn't really on the study though I think it is lacking on maybe about what our water ways and stuff along these scenic highways is. And I really had to deal with this because I belong to a labor's Union 1334 and I'm a retiree from that union and it would be my brothers and sisters that would be doing the flagging. They're the ones that do the flagging in the state of Montana. They're trained to do it and hopefully that would be the ones that would be doing the flagging. But when I went up here today and looked at all that and I tried to weigh in my mind so, alright, maybe 20 or 25 of my people will get to do the flagging but what is this really doing to that corridor along there? And so that's why I'll support the resolution on principle. I think there's things in the resolution that are going to be meaningless of the comment because they don't really address the EPA part of it but as long as we're making comments, you know, I just can't understand them coming down that road. And, you're right, there's been green haulers for 20-30 years going over that road. I guess my biggest fear is, yeah, we do this just for this one outfit, 200 vehicles and that's all this EPA thing talks about is 200 vehicles, but it's a start to something else in my mind, and that's what I would be against. And, you know, the City, the river runs through it and that river happens to be the Blackfoot that they were talking about and all the way up 200 you're close to the Blackfoot and that worries me too, some pristine fishing that could come out of that area. So, I don't agree with everything in our resolution. I'm not sure how good our resolution is; it's just a resolution but I will support it because I do agree with some of it and I'm really worried what's going to happen in the future. So, I'd like to call the question on this so we can get to public comment.

Acting Mayor Childers said, okay, Jon, thanks for your comments. Question has been called. That is non-debatable.

## **MOTION**

Alderman Wilkins made a motion to call for the question.

Upon a voice vote the motion failed.

Acting Mayor Childers said, you know, I think it did not pass. Do you need a show of hands? No, it did not pass. Allright, Jason?

Alderman Wiener said, permanent high wide corridors is what we're getting and that's why that's what the Environmental Review ought to address. It may just look like a camel's nose in the tent I suppose, but we all know what follows that. It's a metaphor you taught me.

Acting Mayor Childers said, further comments? Ms. Mitchell?

Alderwoman Mitchell said, I plan to be making my own questions and comments. It won't have the fancy whereas's and the therefore's. And I think that Mr. Lynch made it clear that the scope of the EA is limited so when we say it's improper limited, that isn't necessarily true. So I guess I would like to amend the whereas on the fourth one down on the second page for it to say: "Due to the limited scope of the EA, MDT cannot properly, instead of possibly, determine impacts" and finish the sentence. Because the scope of the EA is doing what it's supposed to do and for us to say that that's improper, I don't think that's necessarily so. It's doing what it's supposed to do, it just isn't...it's just a little bit too limited and MEPA or NEPA would probably be more in order. So that's my motion to amend.

Acting Mayor Childers said, we have a motion to amend. Jason, would you like to respond to that?

Alderman Wiener said, can you restate it or I can try to restate it as I understand it, would then read: Due to the limited scope of the EA, MDT cannot properly determine...I'll accept that.

Acting Mayor Childers said, that's been accepted as a friendly amendment to the motion. Renee?

Alderwoman Mitchell said, and then I just want to say that by submitting this, basically we're submitting a comment so I think what we need to do individually, if we have questions, are to submit questions more directly and more specifically.

Acting Mayor Childers said, does the Council have any more comments to make? Lyn, who I wrote down, I forgot.

Alderwoman Hellegaard said, I'm not going to support this and the reason I'm not going to support it is I find that there's many misleading statements in this so I'll be submitting comments on my own that more adequately affect how I view this.

Acting Mayor Childers said, anyone else? Alright, I've asked the City Clerk to submit the comments, questions and responses from the Director this evening made by the City Council to the Department of Transportation. Is there any opposition to doing that? Alright. Is there anyone who wants to, in addition, add the public comments to this resolution? I see one or two bobbing heads. I'd like to do that separately if that would work.

Alderman Wiener said, that'd be fine.

Acting Mayor Childers said, but the City Clerk wouldn't like that so fine.

City Clerk Rehbein said, well, it's kind of hard to separate your record.

Acting Mayor Childers said, okay.

City Clerk Rehbein said, it's either your record or...it's not a complete record, the entire conversation because it influences your vote. The public testimony you're going to hear tonight will inform your vote and will inform your resolution.

Acting Mayor Childers said, all right, let's do the complete record. Bob?

Alderman Jaffe said, I'd like our resolution, if passed, to be submitted as a resolution from the City Council and then if you also wish to submit, you know, the record of the proceeding it's a separate item.

Acting Mayor Childers said, and they'd be separate items of course. Of course. Alright, Council has chewed on this for awhile. Now if the folks in the audience would like to make brief comments on this, I think that would be wonderful and there's plenty of you so come on, let's get started and maybe you'd like to cue up. Whatever you'd like to do. Please.

Steve Seninger said, I live in Missoula County. I'm a professional economist. I mention that because as I look at the Environmental Assessment, most of the comments that I have to make are in the context of the economic impact and cost analysis in that document which basically I find totally inadequate. I've carefully reviewed the Environmental Assessment document and have looked at it and related it to my 40 years of experience in economic impact and cost analysis and essentially find it to be as a decision document, which is what MDT is using it as, a totally inadequate document that does not address all the costs and all the impacts for this transportation of equipment to the Tar Sand Projects in Canada. In particular, and I'm not going to go through every point in great detail but just to give you an overview, the documents were really basically inadequate and incomplete by professional standards of cost analysis and impact analysis, and essentially they are inadequate because they assume no job or business revenue loss in Montana's outdoor recreation and tourism industry. The Environmental Assessment is inadequate because it assumes no costs due to big rig accidents. The Environmental Assessment as a decision document is inadequate because it does not go into any kind of long-run cost for MDT's review of supervisory and road maintenance expenditures on the project and it's inadequate because there's no mention at all of any kind of federal dollars that might be used in any of the highway modifications and renovations. I have more detail on those points but rather than take up important time tonight, I would just submit my written statements to the Council's Clerk so that you can have those in the record. In general, I conclude that basically what is needed is a comprehensive Environmental Impact Statement that looks at all the costs to all Montanans, taxpayers, employers, workers, wage earners, etc., all of which is not really addressed in this document. Thank you for your time and I will submit these written comments.

Acting Mayor Childers said, thanks, Mr. Seninger. Would you give them to Dave on the end and we'll pile them up. Would someone else like to comment? Any further comments? Do we have...how many people out there are hoping to comment on this? Great. I thought there was more than two. Would you like to form a line so we can get you up here, please. There's lots of you. Hi.

Michael Phelps said, resident of Ward 4 in Missoula. And first it's a shame that Mr. Lynch has chosen to leave the room already because I would hope that he could hear that he's incorrect in saying there's nothing he can do as a public official to think outside the box on this one. There's at least one thing that lots of public officials have done throughout history and that's resign in protest. In regards to the resolution, in 1989 Exxon Mobil spilled 11 million gallons of oil near Valdez, Alaska causing environmental damage that we're all still dealing with today. And a court ordered the company in 1994 to pay \$4.5 billion in damages to the 33,000 Alaskan natives and non-native fishermen harmed by the spill. Exxon has still not paid up despite posting over \$250 billion in profits in just the last 10 years. Since the ruling over 6,000 of those plaintiffs have died while awaiting compensation. Exxon Mobil flagrant disregard for its responsibility to the people that are affected is merely a part of a long precedented as set. In 1990, a month after Exxon Mobil spilled over a million gallons of oil from a pipeline into the waters between Staton Island and New Jersey, the company was sued by the City of New York for falsifying statements...safety reports after Exxon admitted that the pipelines leak detection system had not worked for 12 years. In 1993, Exxon was sued for knowingly bypassing air pollution control equipment at its Linden, New Jersey Byway Refinery. The same year Exxon heavily publicized a petition...oh, forgive me, I've cut something out to save time. In 1998, Exxon heavily publicized a petition supposedly signed by 17,000 scientists that dismissed the scientific consensus on global warming. The petition was supposedly endorsed by the National Academy of Sciences but the NAS itself later condemned the petition as a fake. In 2000, Exxon was convicted of defrauding Alabama on royalties from gas, wells and state waters and they settled the suit against it and the other nine companies for underpaying the government hundreds of millions of dollars in drilling royalties for federal lands leases. In 2001 they were sued by Texas for extracting oil and gas from state land without permission. And this is the same year that they were sued by the International Labor Rights Fund due to the corporation's complicity in human rights abuses in Indonesia during the Suharto regime. The company contracted the army to provide

security for gas projects on Sumatra and villagers were subsequently murdered, tortured, kidnapped and raped. Exxon supplied the barracks as well as the excavators used to dig mass graves. Exxon has given high paying jobs to former White House officials who falsified government reports to favor the oil industry's position, has engaged in practices of union busing around the globe, has violated clean air and clean water acts, it has traded illegally with countries such as Sudan in violation of official sanctions and is responsible for 41 Super Fund sites in 17 states. Exxon Mobil lies, cheats, steals and kills. It does not care about Montana's environment, Montana's economy or Montana citizens. It cares about only money, profits for its shareholders. It cannot be trusted. Companies contracted by Exxon such as Tetra Tech to draft EAs on its behalf cannot be trusted. And if MDT is willing to engage in backdoor talks with Exxon for almost a year before publicizing its plans and is denying and contradicting its own past concerns about these plans, then MDT cannot be trusted with the public good either. We need more time to review and comment on this EA. We need this assessment to move to federal EIS level. We need to stand our ground against Exxon Mobil. Please approve this resolution. Thank you.

Acting Mayor Childers said, great, thank you. I think I mentioned that we'd like to keep comments to three minutes and must...because people are pretty much doing it. Hi.

Robby Levin said, I'm from...live here in Missoula. And I wanted to address your concerns, Mr. Haines, if you have an ear to spare? Mr. Haines?

Acting Mayor Childers said, and you should address the Chair.

Robby Levin said, okay. To all of us. Okay. In any case you'd brought up some questions about whether this is just a limited un-environmental assessment about 200 loads or if it is actually the initiation of a high wide corridor for the foreseeable future. And I would point out that the infrastructure changes themselves are the corridor. Beyond that it's just a matter of saying okay, we're going to approve these few loads or those few loads or those few loads but the real impact is going on right now of the creation of this corridor. Looking at it in a peace meal fashion as the Environmental Assessment is doing, is in itself inadequate because it is only looking at that when the infrastructure is pointing in that direction. Further, the Port of Lewiston is making its current infrastructure changes under the assumption that this will be going on for the foreseeable future. I'd like to ask again if, Mr. Lynch is unfortunately not here either anymore but if this is only infrastructure changes for a limited number of loads, would they be removing the infrastructure when it's done? I don't think so. The other think is about the adequacy or inadequacy of this particular EA is I did ask them at their public hearing here in Missoula a week and a half ago if they had any plans for what had to remediate an emergency if a load...if a trailer loses its load or falls into a creek or something like that, and after many, many questions they finally had to admit no, we don't have a plan. That is not part of the plan and they said something like, well, we'll amend the plan for that. Well, that's a fairly significant amendment. He said something, we'll hire a crane and I assume cranes that can hold...that can handle 335,000 pounds aren't the sort of things that you just go down to Lowes and pick up, that they need to be on call significantly in advance, if they exist at all in western Montana, which I don't know if it's clear that they do or not. If they do...if a trailer does lose its load, it could take several days, if not longer, to get a crane to the site. It could take several days to assemble the crane, several days for it to do its job and several days for it to disassemble and move out of the way, affectively, closing certain roads for several days or several weeks or longer and so the Environmental Assessment didn't address any of those possibilities, not to mention which it did not mention any of the liabilities that could come out of that. Again, we don't want to be caught holding the bag if there's any major disasters like that. The Environmental Assessment didn't even ask the questions let alone answer them. Obviously if they run over a light pole or an electric line, they would probably pay for it but what happens if they shut down a road for several weeks, say between here and Potomac? What happens to the commuters from Potomac who can't come through, who can't get here? What happens to the businesses that employ them? None of this was addressed in there. The closes, when Ken Johnson at this...the representative from Exxon was asked at the public hearing last week well what happens if we have other incidental injuries like that? And his response was, you can take us to court if you want to. In essence, he was saying sue me. And after the gentleman before me, his record of Exxon's dealing in courts, we can understand what a bad plan that is we are dealing with liabilities. So sue me is not a good plan. Lots more comments but I'll leave it at that for now. Thank you for...I really support this bill. Thank you, you folks, for bringing it up and I urge you to pass it. Thank you.

Acting Mayor Childers said, thank you very much. Howdy.

Cliff Bradley said, thank you for taking public comment on this. I'm a resident of Missoula. On Friday this week I had an occasion to have lunch in Grangeville, Idaho and read the Idaho...the *Lewiston Morning Tribune* discussing the changes at the Port of Lewiston and how this is going to be a high wide corridor for transporting everything from drilling rigs and supplies for the Tar Sands to wind generators and everything. A long editorial. I'd recommend going to *Lewiston Morning Tribune* and reading the plans for this. So I really do support this resolution. This is much, much broader implication than a simple issuing of a permit to transport a large load. I think there needs to be coordination between the state of Montana, the cities on the route, tribal authorities because this goes across several tribal lands, which I think may make it a federal action. Certainly it can be requested by tribes. So I really support this resolution. We have a habit in this country of reducing things to this permit or that permit and pretty soon they add up to the largest environmental catastrophe on the planet and there needs to be some way that the citizens of this state and the citizens of this country can address these things, so I really appreciate your bringing this resolution because moving this to an EIS does give us at least some broader way to deal with the much larger implications of this. This is not 200 loads. The Port of Lewiston is not being rebuilt for 200 truckloads of supplies. Thank you.

Darryl Armstrong said, from East Pine Street. I was at the Meadow Hills School meeting and I heard had what Jim had to say and I heard what Imperial Oil, Exxon Mobil had to say and it seems they were working very tightly together. In fact, I don't know how many of the others that are still here, that were at the meeting got the same impression but we definitely got, we are not going to be able to vote as citizens of Montana on this. We are not going to be able to even, in that meeting, make any statement that goes beyond the narrowest interpretation of the project. We got the overall impression or at least I did, and I got the feeling a lot of other people did too, that as citizens we would be entirely ignored and that includes our comments on the EA. I don't know if that's true or not, I certainly intend to make some but I'm very glad that the City of Missoula is choosing to. We need your official status. As a citizen I will state very clearly on the record, Chief, you should pay attention now because, yes, there will be people that sit down in front of those trucks and I intend to be one of the very first ones, peacefully, quietly but firmly. Okay. To switch hats. I am a veteran of the Missoula Historic Preservation Commission. I was the professional seat on that commission while I was there. I am an archeologist. I have been a federal archeologist and there are significant national preservation acts concerns in this. I talked to Jim about that there. I asked him a public question, he referred me to the Exxon Mobil people who told me that this had been done. I got a chance later on to look at the actual document. It says there are concerns but it doesn't really lay out how the survey was done, whether it was just a record search or if it was on the ground. This is important to be able to determine whether or not adequate archeological work was done. There are historic. There are scenic river corridors here. There is the Lolo Trail. There is historic after historic property including Fort Missoula. We have not got adequate information to look at this and going agency by agency it could be an awful mess. The biggest sections of land as far as I can tell that have federal concerns on this and natural historic preservation acts certainly does that as well, as federal monies laid out but national historic properties and perhaps known sites would be present on the National Forests, it would be present on BLM land, perhaps river corridors, I don't know, it's not my level of expertise but these things really do need to be taken a look at. I have no official standing right now. I'm just a citizen and I really do intend to make some comments and I really would like them heard because I am very concerned about this. Thank you very much.

Zach Brown said, I'm a student at the University of Montana. First of all, I just want to point out that and I think it's prudent to point out that the engineers who drafted this document were in the pocket basically of Exxon Mobil, the richest corporation in the world. This was not some third party and this was not the state of Montana. This was Exxon Mobil telling you what we're going to do and their funding the engineers who came up and made this Environmental Assessment. I do not trust Exxon Mobil to make that decision about Lolo Creek and the Lochsa and the Blackfoot River. Not even one bit. And so then referring to turning this into a public...I've already made my public comments but in short we need an EIS, Public comment needs to be extended and things like this becoming a permanent corridor unless we just want to keep our heads in the sand as the state of Montana, that needs to be addressed. I can't even understand that argument. It's putting yourself into a little tiny box about this is just the law, this is just a permit. The reason that Exxon Mobil is making this a corridor is so they can make millions and millions and millions more in profits. Do you think Conoco Phillips is going to say, oh, no I don't want millions and millions more? It's going to become a permanent corridor. Other companies will use it. Trucks will be coming through permanently. This is not a 200-truck deal. I'm a simple guy but I understand that. Lastly,

I just wanted to thank you, Mr. Wiener, for bringing this. As a student, I believe you are a representative, right...at the University. You're very, very representative of the student body and you're speaking on behalf of many thousands of students, so we really appreciate you bringing this up and fully encourage you to support this. And just as a second side note, the MDT apparently has put themselves inside a tiny little box that is this law and this permitting process. You guys do not have to be limited to that box even if it is some sort of a symbolic measure saying that we do not support this and this is not right and this project doesn't make any sense, if it's a symbolic measure, I would certainly appreciate it as a citizen of Missoula because we're not necessarily in a position to make that sort of a high profile far-reaching statement but you certainly are. So I would encourage you to go above and beyond this resolution in the future as well but for now certainly support this resolution. Thank you.

Suzy Rosette said, I am a...I live here in Missoula. I just wanted to commend you first on bringing this resolution to the table, I really appreciate that. I think we all know that Exxon is known for their empty promises and I don't think that we can expect them to keep them up after they've done what they want to do. Also, I wanted to say that I heard that last year Director Lynch made a comment to whatever committee that he had to talk to about this project saying that this will cost Montana taxpayers money and he also said himself that this needs an EIS. I question his motives at this point changing completely what he said just last year to Exxon Mobil's view on this. Also, I wanted to say that I have actually personally talked with one of the truck drivers from the Dutch Trucking Company Mammoet which is the one that will be bringing these trucks through Montana and from what him and his comrades have talked about is that this is not just the 200 trucks. They plan on bringing more than 200 trucks through. He actually said something along the lines of 2,000 trucks that just Mammoet is discussing with other companies to bring through Montana on this corridor. I also wanted to comment on the EA's weight of these trucks and actually the weight of the trucks is significantly more because they're only weighing in on the actual module; they did not include the weight of the module, the trucks that will be pushing and pulling this as well as the trailer. I believe the actual weight is more closer to like 580,000 pounds as opposed to the 300-something thousand pounds that they had originally discussed. So I really...I would really appreciate it if the City Council would pass this resolution, even if it is a symbolic thing. I think that we can take it another step further afterwards and show MDT that, you know, that it's not okay with Montana. We need to do something more and we should allow Montana to stay beautiful and clean and not make this a huge corridor for these trucks. Thank you.

Rita Jenkowski Bradley said, I'm a citizen of Missoula and I thank you for bringing this resolution forward. And I think a second truly independent assessment is needed. The potential adverse impacts are significant. An immediate red flag goes out when I read that the impact listed in the EA overview are predetermined as minimal or no environmental impacts. This should be challenged. Exxon has a history of mishap and contamination of water ways and fragile ecosystems. To state there is only a slight risk of spill of contaminants or hazardous waste with minimal impact, this is also questionable. A load this large over mountain passes and river corridors has a high risk of an accident. Mr. Lynch says that we have to follow the Environmental Policy Act. Well, I would like to look to Montana's constitution which guarantees a right to a clean and healthful environment for Montanans for present and future generations. I think this is being jeopardized. There are other routes available. When Exxon Mobil says this is the least expensive it is because they are not weighing the long-term externalities. Montanans should not be subject to such potential loss when other alternative routes in energy technologies that are less dangerous are available. I encourage the City Council to add an amendment to deny the permit altogether. Thank you.

Sarah Anderson said, a resident of Missoula. I just want to thank you guys for taking the time to consider this resolution and I encourage you to pass it. Thank you.

Beth Judy said, I also want to thank you very, very much for proposing this resolution and I applaud your thoughts, questions and concerns that you've voiced tonight. A few thoughts that I had, I really appreciated Bob Jaffe's point that it's not so much what we're looking at now but it's ten years later and that we discover consequences and then we have to pay for them. I thought that was excellent and that's kind of the pattern that has often afflicted us here in Montana in some of our decisions with industries. I also wondered how many times has or does the Department of Transportation actually revoked permits. That would be something to look into. Do they actually do that ever? And I do think, I do agree...I disagree with Dick Haines about the permanent corridor. His thoughts that that's not important, on a positive note when you make a path, you see it all the time in Missoula, when there's a new bike lane or

something and you think, well, that's just out in the middle of nowhere. All of a sudden there's bunches of people on it and you make a path, people use it and this is going to be a permanent...these changes are going to be in place and there's a lot of activity in the Tar Sands; it's not just the Kearls. There's many other projects. They've got lots of plans up here. This is going to be a road that will be open to use and will be used. Let's see. I also was wondering how can we...it sounds like DOT will decide on the bond amount by kind of looking at the road and kind of just looking at the engineering of the road but there are lots of other economic values that I wonder if they will be taking into consideration, the value of wilderness, the value of tourism and all of that. And I don't know how we can support this without knowing how much they will make that bond for. And I also just feel like this is how Montana always loses. We want to help people to do business. We agree in the short run. We're interested in jobs but in the long run we always end up paying. Thank you.

Zach Porter said, thanks again for holding this public comment period. I'm a student at the University of Montana, President of UM Climate Action Now student group and a resident of Missoula. And I've made public comment at the hearing a week and a half ago, made comment at the Public Works hearing recently and I'll be submitting written comment as well, so I'll keep this very brief, but I just wanted to say thanks again for introducing this resolution, Jason, and to everyone who's supporting it on the Council tonight. I hope that we can extend the public comment period. This project requires an EIS under the Montana Environmental Policy Act, much less full EIS review under NEPA, the National Environmental Policy Act. Again, there is no need for these trucks to come through western Montana and Missoula. A route already exists. If economic reasons are the only major factor here, why couldn't we modify I-90 for that matter to allow these trucks to pass through? Clearly that's the only prohibited factor. It's not any matter of geography that prevents these trucks taking another route, it's a matter of economics and there's no reason it has to come through such sensitive corridors as the Lochsa River, Lolo Creek, the Blackfoot, over Rogers Pass and up the spectacular Rocky Mountain front. I really just wanted to say thanks again and like everybody else who's here who won't be speaking tonight, just to raise their hand who came here to oppose trucks coming through Missoula. Would you just raise your hand real quick? Thanks.

Anton Giblynson said, I'm a resident of Missoula in Ward 5. I'm a UM student and I support this resolution. I have already submitted written comments and may submit more but as the resolution points out, the Kearl Module Transport Project opens the door to indefinite use of the Montana corridor, raising questions that a simple MDT Environmental Assessment does not answer. And the EA itself points out that having the infrastructure in place will make it much easier for them to get more 32J permits. As Montanans and Missoulians, most of us don't ask for much. We are content with sub-marginal financial situations as they are parents, because our state's beautiful environment more than compensates. However, when something significant wants to happen, something that could indefinitely impact our streams and our wildlife, our drivers and our transport infrastructure, our tourism and our scant economy and even our glaciers and snow-packed in the long term, we ask for a bit more discretion, a lot more education on the issue, a lot more detail, a lot more science and we ask for a wider scope of investigation, an EIS under MEPA and NEPA for sure. I and we thank all of you for considering this resolution and if there's one thing that we all share it's the future so it's good that we're actually thinking about it. Thanks again.

Carla Abrams said, I'm a homeowner on the west side and I urge you to pass this resolution. Thank you.

Acting Mayor Childers said, you're quite welcome.

Zach Creedy said, I'm a aquatic ecologist and I work extensively on Lolo Creek watershed doing research there. There's...it's kind of beyond me how there isn't an EIS done on this already. It's going to get highway money from the federal government to maintain these huge pull-outs on Lolo Creek regardless of what the Montana Department of Transportation thinks. Lolo Creek can't take any more improvements. It's already got tons of problems and I'm here to say thanks for drawing this resolution and I support it.

John Wolverton said, I'm a resident in the Franklin neighborhood which is in Ward 6. I want to particularly thank Councilman Wiener for bringing this up. I urge you to support this and approve it and please do the right thing. This is a big concern for a lot of people. All the concerns that have been brought up before me I want to second those and there's a lot of global concerns that go along with this also. Thank you.

Acting Mayor Childers said, thanks. Further public comment? Hi.

Patricia Hogan said, I live in Franklin-to-the-Fort Neighborhood too, which is in Missoula and I support this resolution. I appreciate you bringing it up and I've heard a lot of good stuff here tonight so I don't have anything to add to it but I would just like to say that I take Council member Walzer's point about common sense being sufficient to bump this up to an EIS from an EA. If it wasn't for that, we wouldn't need an environmental review, we could just attach the EA as an exhibit to the permit. So let's have an EIS.

Acting Mayor Childers said, thanks. Any further comment?

Barbara Hall, Clark Fork Coalition, said, thank you for taking public comment and thanks for staying so late and I'll be really brief. My name is Barbara Hall and I'm with the Clark Fork Coalition and I'd like to thank Mr. Wiener for bringing this resolution to the Council and I appreciate that you are also well informed on both the project and the EA, so it leaves me really little to say except I think MDT really does need to hear from us that they do have the discretion to do what they are legally required to do under both MEPA and NEPA to take this to the next level and conduct an environmental review under an EIS. And we actually commend MDT because they did take this project a next step initially, even under pressure from Exxon attorneys to do a categorical exclusion on the project, and so we commend them for that to go at least to the EA route and we do think now it's time to go to the next stage. So thank you and I really urge you to pass the resolution.

Acting Mayor Childers said, thanks. Further public comment? Hello.

Reggie Herbert said, I'm a resident of Missoula. I would just like to briefly mention that when asked directly Mr. Johnson, representing Standard Oil or Imperial Oil at the public hearing at Meadow Hill Middle School last week when asked if he would...or if this project would exclusively hire Montanans, and asked if that was a guarantee...or if there was a guarantee that Montanans would be hired for this project, he said that there was in fact no guarantee that Montanans would be hired for any of these jobs involved in this project. He said that they were repeatedly over and over that they were committed to hiring Montanans however there's no wording or any contract anywhere that requires them to do so, so I think it's important that folks take that into consideration. Thank you.

Acting Mayor Childers said, thank you. Anyone else wish to speak? I'd like the record to show when a gentleman asked how many people were here to oppose the Kearl Modules, dozens of hands went up in the audience. Did you wish to speak, ma'am? Well, yeah, I just need to know when we're done is all. Go ahead.

Neal Bennett said, I'm a student at the University of Montana and a member of UM Climate Action Now, and I'd like to say that I would urge a vote, a yes vote, on this resolution so, yeah. Thanks.

Acting Mayor Childers said, thank you. The floor is still open. Anyone else? Alright, the floor is now closed. City Council members, more questions or comments from City Council members? I see no more questions or comments from City Council members. I'd like to have a roll call vote on the resolution.

## **RESOLUTION 7528**

### **MOTION**

Alderman Wiener made a motion to adopt a resolution of the Missoula City Council commenting on the Montana Department of Transportation's Kearl Module Transportation Environmental Assessment and requesting the heightened level of scrutiny afforded by an environmental impact statement conducted under the Montana Environmental Policy Act and the National Environmental Policy Act, as amended.

Upon a roll call vote, the vote on Resolution 7528 was as follows:

AYES: Childers, Houseman, Jaffe, Marler, Mitchell, Strohmaier,  
Walzer, Wiener, Wilkins

NAYS: Haines, Hellegaard,

ABSTAIN: None

ABSENT: Rye

Resolution 7528 carried: 9 Ayes, 2 Nays, 0 Abstain, 1 Absent

Acting Mayor Childers said, thank you. That resolution is passed. It will be forwarded to DOT for inclusion in the record as will, are we going to make a transcript of this whole thing, Marty?

City Clerk Rehbein said, there's City Council meeting minutes are transcript of the proceedings.

Acting Mayor Childers said, as will a transcript of this meeting. I want to really thank you all for coming. Thanks. And there were some handouts. They should be included as well.

## **NEW BUSINESS (INCLUDING, BUT NOT LIMITED TO, REPORTS)**

### **ITEMS TO BE REFERRED**

#### **To Administration & Finance Committee**

- Claims-Consent Agenda (Brentt Ramharter)
- Approve Community Development Block Grant (CDBG) contracts, as authorized in resolution number 7502 ([memo](#)).—Regular Agenda (Melissa Gordon-Wrangler)
- Approve bond resolution authorizing the issuance and public, competitive sale of \$885,000 of Curb, Sidewalk, Gutter and Alley Approach, Series 2010A Bonds ([memo](#)).—Regular Agenda (Brentt Ramharter)

#### **To Committee of the Whole:**

- UM/City Luncheon ([memo](#)).—Regular Agenda (Mayor Engen)

#### **To Conservation Committee:**

- Approve an approximately 816 square foot encroachment easement in Northview Park for driveway and parking lot improvements on the commercial lot owned by Sam Caras (401 SW Higgins Avenue) ([memo](#)).—Regular Agenda (Jackie Corday)

#### **To Plat, Annexation and Zoning Committee**

- Consider a proposal to add sub-section C, "Subsidized Development", to Section 20.05.040 "Development Options" amend Title 20, the city's zoning ordinance and forward to the Planning Board for consideration ([memo](#)).—Regular Agenda (Bob Jaffe)
- Consider a request for a "Religious Assembly" conditional use for property located at 202 Brooks Street (St. Paul's Lutheran Church) and zoned RM1-35 Residential / NC-B Boulevard Neighborhood Character Overlay Zoning District ([memo](#)).—Regular Agenda (Janet Rhoades)
- Subdivision report format ([memo](#)).—Regular Agenda (Bob Jaffe)

#### **To Public Works Committee**

- Approve and authorize the Mayor to sign change order No. 1 for the Reserve Street Sewer Main Replacement Project (Site ID 184), in the amount of \$80,783.41 to Becco General Construction Services, LLC ([memo](#)).—Regular Agenda (Kevin Slovarp)
- Approve and authorize the Mayor to sign Amendment No. 1 with HDR, Inc. for additional engineering design and construction services for the Reserve Street Sewer Main Replacement Project in the amount of \$9,938.31 ([memo](#)).—Regular Agenda (Kevin Slovarp)

## **MISCELLANEOUS COMMUNICATIONS, PETITIONS, REPORTS AND ANNOUNCEMENTS**

**ADJOURNMENT**

President Childers thanked the council members and the staff for their service.

The meeting adjourned at 10:12 P.M.

ATTEST:

APPROVED:

\_\_\_\_\_  
Martha L. Rehbein  
City Clerk

\_\_\_\_\_  
John Engen  
Mayor

(SEAL)

Respectfully submitted by,

Nikki Rogers, Deputy City Clerk