

## **Public Safety Committee Meeting November 21, 2012**

The **Public Safety Committee** met Wednesday, November 21, 2012, at 12:00 pm in the City Hall Conference Room. Present were Committee Chairperson John Uden and Committee Members Sue Galbraith, Duane Andrews and Mark Ahner. Also present were Mayor C.A. Grenz, Police Captain Mark Reddick, 911 Coordinator & Lead Dispatcher Heather Roos, Public Utilities Director Al Kelm and Committee Recorder Connie Watts.

### **REVIEW FOR SPEED BUMPS IN 100 BLOCK OF NORTH CENTER**

Jim Dighans, 107 N. Center Avenue, asked to address the committee to request speed bumps be placed on the 100 block of North Center. He said that traffic goes way too fast around that corner and he is concerned that a vehicle will end up in somebody's yard.

Utilities Director Kelm had contacted Montana Municipal Insurance Authority, the City's insurance carrier, who said they were not in favor of speed bumps. If they were to cause an accident or damage to someone's car, the City would be liable for those damages. He says there is also a lot of maintenance with the speed bumps, and they do cause problems with snow plowing and street sweeping. MMIA suggested an increase in police patrols in that area.

Some other suggestions included a 15 mph speed limit and/or stop signs at that intersection on both the north/south Center Street and the east/west Pleasant Street, closing the street, and parking an unmanned police car along that route.

Chairperson Uden asked for a motion to install speed bumps as requested by Mr. Dighans. No motion was offered.

*\*\* After further discussion, Committee Member Dwayne Andrews moved to recommend installing a stop sign on Pleasant Street at the intersection of Pleasant and Center, and also a stop sign on Center Street at that same intersection. Committee Member Galbraith seconded the motion which, on roll call vote, passed unanimously, 4-0.*

Mr. Dighans also expressed concern about police officers "letting someone go" after issuing a ticket for no insurance. Chairman Uden said he would discuss the issue with the police chief and his administrative staff.

### **REVIEW POSSIBLE AMENDMENTS TO ARTERIAL STREETS IN ORDINANCE NO. 1231**

Captain Reddick distributed Ordinance 1231 with his suggested changes highlighted in yellow with explanations on the side margin. A copy of this proposed revised ordinance is attached to these minutes and is made a part thereof.

Captain Reddick noted that #'s 5 and 33 were jurisdictional questions, because part of the designations were in either private land or county/state jurisdiction. He suggested that an exclusion outlining the jurisdictional discrepancy could be made a part of the wording.

#17 references "Wibaux Park Drive", which he suggested be changed to "South Wibaux Park Drive" and "North Wibaux Park Drive." After discussion, it was noted that "South Wibaux Park Drive" should read "Pearl Street" and "North Wibaux Park Drive" should read "Fort Street."

Captain Reddick noted that the signs on Stower Street by the Rib & Chop House are turned parallel with the street instead of perpendicular and, therefore, are not easily discernable. He asked if Director Kelm could look into this.

Numbers 34 through 38 were added by Captain Reddick, as these sections of street had never been designated as arterial streets and so the City would not be able to put 15 mph speed limit signs there.

It was brought to the attention of the Committee that #36 deals with US Highway 59 North, which is a State highway, and the City has no jurisdiction.

*\*\* Chairperson Uden moved to recommend amending Ordinance 1231 with the highlighted areas set forth by Captain Reddick, with the exclusions inserted for those areas not in the City's jurisdictions. The motion was seconded by Councilperson Galbraith and, on roll call vote, passed unanimously 4-0.*

## **REVIEW ISSUES RELATIVE TO SCHOOL ZONE SPEED LIMITS AND CONSIDER ENGINEERING AND TRAFFIC STUDY/INVESTIGATION OF ALL SCHOOL ZONES**

Chairperson Uden referenced the information from the Police Department, City Judge and Attorney Huss regarding citations that have had to be dismissed because officers had been using violation of school zone speed limits as probable cause for the stops. The minimum fine in a school zone is \$75, versus \$45 in a normal 15 mph speed zone. This higher amount for school zones must be posted along with the 15 mph speed limit sign. The school zones in Miles City do not have the penalty signs posted.

As a separate but related issue, Section 61-8-310 MCA states that school zones need to be established "on the basis of an engineering and traffic investigation..." Attorney Huss does not believe any 15 mph *school zone* in Miles City was based on a traffic study. Normal 15 mph designations, however, may be established by the City on "arterial streets." Arterial Streets were established by Ordinance No. 1231.

Utility Director Kelm said that, while he was talking to the people at MMIA, he asked them about having to do a traffic study around the schools in order to set a 15-mph zone. They told him they had never heard of it. If the Council would want to reduce the speed limits

around a school as a *designated School Zone*, a traffic study would need to be done. He also visited with Attorney Huss about this, and he is going to research this issue. Before deciding anything on a traffic study, Director Kelm would like to wait until he hears back from Attorney Huss.

Committee Member Andrews said that, according to Attorney Huss's opinion, it is possible to designate 15 mph speed zones around schools, even if the additional notification of an increased fine was not noted. It would be simply a "15 mph zone" instead of a "15 mph School Zone." Chairperson Uden wished to table this issue until more information is received from the City Attorney. The Committee was agreeable to this.

Captain Reddick has instructed officers not to reference "school zone" in 15 mph speed zones until Attorney Huss gives his opinion and this issue is settled.

### **REVIEW RETENTION/STAFFING PROBLEMS IN EMERGENCY DISPATCH AND RECOMMENDATIONS FROM THE DISPATCH SUPERVISOR**

911 Coordinator/Lead Dispatcher Heather Roos addressed the Committee regarding the high turnover in the dispatch center and the issue of only one person available to handle all the calls at the same time. She had addressed the issue at budget time this year, but the funding was not provided at that time. There is also the issue of retaining, hiring and training part-time dispatchers. There have been five dispatchers who have left the City over the past two years, most for full-time jobs. Ms. Roos would like to restructure her department to do away with part-time positions all together, and hire two new full-time dispatchers, with some overlapping shifts. The restructure would cost between \$25,000 and \$35,000 per year, most of which would be for employee benefits.

Ms. Roos said that 911's funds are being almost totally used up on operations, with the increase in call volume. The majority of the increase is coming from out-of-state cell phone calls, which are not funded by 911. So the 911 funds are not increasing, but the call volume is.

Committee Member Ahner noted that dispatch is entirely in the general fund. He also said the Custer County Commissioners normally contribute approximately 25% of the cost of dispatch wages. .62 FTE's is actually the total that would be added, after eliminating the three part-time positions and increasing the full-time staff by two.

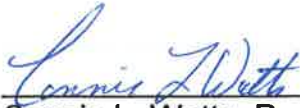
**\*\*** *Chairperson Uden moved to recommend that the dispatch staff be allowed to increase its personnel by .62 FTE's - eliminate three part-time and add two full-time positions. The motion was seconded by Committee Member Galbraith and, on roll call vote, the motion passed unanimously, 4-0.*

## Adjournment

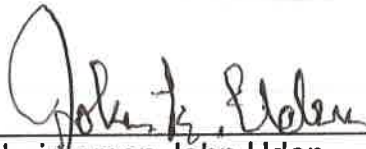
*\*\* Having no more business to come before the Committee, Committee Member Andrews moved to adjourn, seconded by Committee Member Galbraith and passed unanimously. The meeting was adjourned at 1:25 p.m.*

Respectfully Submitted:

Public Safety Committee Chairperson:



\_\_\_\_\_  
Connie L. Watts, Recorder



\_\_\_\_\_  
Chairperson John Uden

**PUBLIC SAFETY COMMITTEE  
AGENDA**

**DATE:** Wednesday, November 21, 2012  
**TIME:** 12:00 Noon

**PLACE:** City Hall Conference Room

**AGENDA:**

- 1) Roll Call
- 2) Review for speed bumps in 100 block of North Center.
- 3) Review possible amendments to arterial streets in Ordinance No. 1231 .
- 4) Review issues relative to School Zone speed limits and consider engineering and traffic study/investigation of all School Zones.
- 5) Review retention/staffing problems in Emergency Dispatch and recommendations from the Dispatch Supervisor.
- 6) Citizen Request.
- 7) Adjournment.

Public comment on any public matter that is not on the agenda of this meeting can be presented under "Request of Citizens" provided it is within the jurisdiction of the City to address. :Public comment will be entered into the minutes of this meeting. The City Council cannot take any action on the matter unless notice of the matter has been made on an agenda and an opportunity for public comment has been allowed on the matter. Public matter does not include contested cases and other adjudicative proceedings.

# OFFICE OF CITY COURT

Honorable Al Homme, City Judge

17 S. 8<sup>th</sup>, P.O. Box 910  
Miles City, Mt 59301

Telephone: (406)234-5939

Fax: (406) 234-8628

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**DATE:** October 17, 2012  
**TO:** Mayor Grenz  
**FROM:** Honorable Al Homme, City Court Judge  
**RE:** School Zone Speeding

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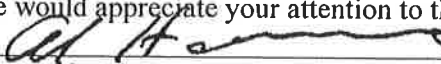
It has come to this Court's attention in the last two weeks that our 15 mph School Zone signage does not meet statutory standards as revised in 2011. Section 618-311 (2)(b) states "If a local authority decreases a speed limit in a school zone, the local authority shall erect signs conforming with the manual adopted by the department of transportation under 61-8-202 giving notice that the school zone has been entered, of the altered speed limit and the penalty provided in 61-8-726 and that the school zone has ended."

**Effect:** In the last two weeks the Court has been required to dismiss two DUI cases where the probable cause for the stop was speeding in a "School Zone." Three school zone infractions for speeding have also been dismissed.

It is my belief this change does not affect the 15 mph zones around Parks.

The quicker you remedy this, the quicker we can enforce the intent of the School Zone speed restrictions.

We would appreciate your attention to this issue at the soonest possible date.

  
\_\_\_\_\_  
Honorable Al Homme  
City Court Judge

Enclosure

cc: Mark Ahner  
Bill Melnik  
Sue Galbraith  
John Uden  
Jerry Partridge  
John Hollowell  
Dwayne Andrews  
Roxanna Brush  
Chief Doug Colombik  
Al Kelm, Public Service Director  
Jerry Huss, City Attorney  
Jeffrey A. Noble, City Prosecutor

# Montana Code Annotated 2011

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**61-8-310. When local authorities may and shall alter limits or establish or alter area of school zone.**

(1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under [61-8-303](#) and [61-8-309](#) through [61-8-313](#) is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

- (a) decreases the limit at an intersection;
- (b) increases the limit within an urban district, but not to more than 65 miles an hour during the nighttime;
- (c) decreases the limit outside an urban district, but not to less than 35 miles an hour on a paved road or less than 25 miles an hour on an unpaved road; or
- (d) decreases the limit in a school zone or in an area near a senior citizen center, as defined in [23-5-112](#), or a designated crosswalk that is close to a school or a senior citizen center to not less than 80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but not less than 15 miles an hour. If warranted by an engineering and traffic investigation, a local authority may adopt variable speed limits to adapt to traffic conditions by time of day, provided that the variable limits comply with the provisions of [61-8-206](#).

(2) A board of county commissioners may set limits, as provided in subsection (1)(c), without an engineering and traffic investigation on a county road.

(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under [61-8-303](#) for an urban district.

(4) (a) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(b) If a local authority decreases a speed limit in a school zone, the local authority shall erect signs conforming with the manual adopted by the department of transportation under [61-8-202](#) giving notice that the school zone has been entered, of the altered speed limit and the penalty provided in [61-8-726](#), and that the school zone has ended.

(5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas. The commission shall set these limits in accordance with [61-8-309](#).

(6) A local authority establishing or altering the area of a school zone shall consult with the department of transportation and the commission if the school zone includes a state highway or a federal-aid highway or extension of a federal-aid highway.

(7) A local authority shall consult with district officials for a school when:

- (a) establishing or altering the area of a school zone near the school; or
- (b) setting a speed limit pursuant to subsection (1)(d) in a school zone near the school.

(8) A speed limit set on an unpaved road under subsection (1)(c) must be the same for all types of motor vehicles that may be operated on the road.

**History:** En. Sec. 43, Ch. 263, L. 1955; amd. Sec. 1, Ch. 89, L. 1971; amd. Sec. 57, Ch. 316, L. 1974; R.C.M. 1947, 32-2146; amd. Sec. 2, Ch. 614, L. 1985; amd. Sec. 1, Ch. 686, L. 1991; amd. Sec. 1, Ch. 213, L. 1993; amd. Sec. 3, Ch. 287, L. 1995; amd. Sec. 5, Ch. 43, L. 1999; amd. Sec. 198, Ch. 542, L. 2005; amd. Sec. 2, Ch. 83, L. 2009; amd. Sec. 1, Ch. 204, L. 2011.

*Provided by Montana Legislative Services*

## ORDINANCE NO. 1231

### AN ORDINANCE AMENDING SECTION 22-2(2) OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, MONTANA TO PROVIDE A DEFINITION AND DESIGNATION OF ARTERIAL STREETS WITHIN THE CITY OF MILES CITY.

**BE IT ORDAINED** by the City Council of the City of Miles City, Montana as follows:

**Section 1.** Section 22-2(2) of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

*“(2) Streets and roadway areas.*

*a. Arterial Street means any of the following designated streets:*

- (1) North 7th Street from its intersection with **Main** Street. to its intersection with **Truscott Street**.
- (2) Tatro Street from its intersection with North 7th Street to its intersection with Woodbury Street and continuing with Milwaukee Street from its intersection with Woodbury Street to its intersection with North Montana Avenue. (Garfield School – South Side)
- (3) Woodbury Street from its intersection with Leighton Boulevard to its intersection with Roberts Street. (Garfield School – West Side)
- (4) North Montana Avenue from its intersection with Main Street to its intersection with Jackson Street. (Triangle Park – East Side)  
(Sacred Heart School – West Side)
- (5) Leighton Boulevard from its intersection with North **Sewell** Avenue to **the point it merges** with Washington Street and continuing with Washington Street to its intersection with North **3rd** Street. (No jurisdiction east of N. Sewell Ave.)  
(Triangle Park – North Side)  
(Sacred Heart School – South Side)
- (6) North 5th Street from its intersection with Main Street to its intersection with Marion Street.
- (7) North 9th Street from its intersection with Main Street to its intersection with Washington Street. (Washington School – West Side)
- (8) North 10th Street from its intersection with Main Street to its intersection with Washington Street. (Washington School – East Side)
- (9) Palmer Street from its intersection with North 7th Street to its intersection with North Montana Avenue. (Washington School – South Side)
- (10) Orr Street from its intersection with North 7th Street to its intersection with Leighton Boulevard. (Washington School – North Side)



- (11) Pleasant Street from its intersection with North 7th Street to its intersection with North Montana Street.
- (12) North Strevell Avenue from its intersection with Main Street to its intersection with Valley Drive East/US Highway 12. (Jefferson School – West Side)
- (13) North Stacy Avenue from its intersection with Main Street to its intersection with Leighton Boulevard. (Jefferson School – East Side)
- (14) South Winchester Avenue from its intersection with Main Street and merging with South Cale Avenue continuing to its intersection with Wilson Street. (Wibaux Park – East Side)  
(Highland Park School – West Side)
- (15) South Strevell Avenue from its intersection with Main Street to its intersection with Balsam Drive. (Wibaux Park – West Side)
- (16) Wilson Street from its intersection with South Haynes Avenue to its intersection with South Strevell Ave.
- (17) South Wibaux Park Drive and North Wibaux Park Drive from their intersections with South Winchester Avenue to their intersections with South Strevell Avenue. (Wibaux Park –South Side)  
(Wibaux Park –North Side)
- (18) Fort Street from its intersection with South Montana Avenue to its intersection with South Strevell Avenue. (CCDHS – South Side)  
(Lincoln School – North Side)
- (19) South 10th Street from its intersection with Main Street to the point it merges with Pearl Street and continuing to Pearl Street’s intersection with South Strevell Avenue. (Lincoln School – South Side)  
(Pre School – South Side)
- (20) South 8th Street from its intersection with Main Street to the point it merges with Stower Street and continuing east on Stower Street to its intersection with Michels Street. (Highland Park School – North Side)  
(3100 Stower Street – Blind Corner)  
(Large amount of vehicle & pedestrian traffic)  
(Future Restricted Zone)
- (21) Tompy Street from its intersection with South Montana Avenue to its intersection with South Haynes Avenue.
- (22) Comstock Street from its intersection with South Montana Avenue to its intersection with South Haynes Avenue. (Highland Park School – South Side)
- (23) South Lake Avenue from its intersection with Main Street to its intersection with Tompy Street. (CCDHS – East Side)  
(Lincoln School – West Side)
- (24) South Center Avenue from its intersection with Main Street to its intersection with Tompy Street. (CCDHS – West Side)  
(Pre School – East Side)
- (25) South Montana Avenue from its intersection with South Center Avenue to its intersection with Tompy Street.

- (26) South 5th Street from its intersection with Main Street to its intersection with Pacific Avenue. (Riverside Park – East Side)
- (27) South 4th Street from its intersection with Main Street, inclusive of the service road through Riverside Park, to its intersection with Eagle Avenue. (Riverside Park – Inside Park)
- (28) Yellowstone Avenue from its intersection with South 10th Street to its intersection with Neu-Vu Avenue
- (29) Pacific Avenue from its intersection with South 8th Street to its intersection with the Tongue River Bridge.
- (30) Atlantic Avenue from its intersection with South 10th Street to its intersection with Neu-Vu Avenue.
- (31) Bridge Street from its intersection with South 5th Street to its intersection with South Montana Avenue and then northerly on South Montana Avenue to its intersection with Main Street. (Senior Citizen Center – South Side)
- (32) Main Street from its intersection with the Tongue River Bridge to its intersection with South Haynes Avenue.
- (33) South Haynes Avenue from its intersection with Main Street (No jurisdiction on N. Haynes Avenue) to its intersection with Interstate Highway 94.
- (34) The service road between the Oasis and Denton Field from its intersection with Main Street to the point it merges with Sloan Road continuing south on Sloan Road to its intersection with Pacific Avenue.
- (35) Dike Road from its intersection with Pacific Avenue to the point it merges with Wells Street and continuing on Wells Street to its intersection with US Highway 59 North.
- (36) US Highway 59 North from its intersection with William Street continuing north to the south end of the Yellowstone River Bridge. (Kinsey Bus Stop Area)  
(Future Restricted Zone)
- (37) South Sewell Avenue from its intersection with Main Street to its intersection with Boutelle Street. (Miles Comm. College – West Side)  
(One way Restricted Speed Zone)
- (38) Dickinson Street from its intersection with South Montana Avenue to its intersection with South Moorehead Avenue. (Miles Comm. College – South Side)

b. *Controlled access highway* means every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway.

c. *Crosswalk* means:



Doug Colombik &lt;dcolombik@milescity-mt.org&gt;

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**School Zone speed limits**

3 messages

**George Huss** <bhpc@midrivers.com>

Mon, Oct 22, 2012 at 10:49 AM

To: Butch Grenz &lt;mayor@milescity-mt.org&gt;, prcoattorney@rangeweb.net, Doug Colombik &lt;dcolombik@milescity-mt.org&gt;

Cc: ericabhpc@midrivers.com, Jana Mueller &lt;janabhpc@midrivers.com&gt;

Last week I was provided with a copy of a memorandum from City Judge Homme to Mayor Grenz concerning the Judge's dismissal of 2 DUIs where the initial stop was based upon exceeding the speed limit in a school zone. I am attaching a copy of that memorandum.

The memorandum incorrectly references 61-8-311 of MCA and references an amendment to it in 2011. The correct reference should be to 61-8-310, a copy of which I am attaching with the pertinent part highlighted in yellow. There was an amendment in 2011 to 61-8-310, but it did not affect the issue. It was a 2009 amendment that added the requirement that the signage state the penalty for violation. The Office of Public Defender attorney has apparently successfully raised this issue in the DUI prosecutions initially based upon exceeding the speed limit in a school zone.

However, even if the City were to change its signage in the school zones to state the penalty, there is still a basic problem with the speed limit in school zones in Miles City under §61-8-310. The initial sentence of that statute requires that the speed limit be set "...on the basis of an engineering and traffic investigation...". I don't believe there is a single school zone in Miles City where the speed limit was based upon an engineering and traffic investigation, and, if there is one, I don't believe the City could produce the engineering and traffic investigation that was the basis for the speed limit in that school zone.

I addressed this issue in 2007 in a memorandum to Mayor Whalen. I have attached a copy of that memorandum. This was also addressed in e-mails to Mayor Grenz in January and February of this year. See attached e-mail. To date, the Council has not acted further on this matter.

Pursuant to my recommendation, Mayor Grenz had me prepare an ordinance designating certain streets as arterial streets. That passed as Ordinance No. 1231. I am attaching a copy of that ordinance. 61-8-310(3) permits a local government to set speed limits on arterial streets and does not contain the prerequisite that those speeds be based upon an "engineering and traffic investigation". Therefore, it is my opinion that on arterial streets as designated by Ordinance No. 1231 the City Council can establish 15 m.p.h. zones. The City Council did do that on Pearl Street from Montana to Jordan. This is a 15 m.p.h. signed zone, not a school zone. If the Council were to designate other portions of these arterial streets, they would also be 15 mph signed zones, rather than school zones.

Erica Griffith has researched the judge's conclusion that the 2 DUIs be dismissed and we do not agree with that conclusion assuming that the police officer did not know the signage in the school zone was defective. We believe the "good faith" exception set forth in *US. v. Leon*, 468 U.S. 897 (1984) and *Arizona v. Evans* 514 U.S. 1 (1995) and adopted by the Montana Supreme Court in *City of Cutbank v. Daniel Bird* 38 P3d 804, 307 Mont. 460 (2001) should have applied. The exclusionary rule is established to deter police misconduct. Here there was not police misconduct,

but an error by city officials in not posting the penalty on the school zone signs. Unless the police officers knew the signage was defective, they should be able in good faith to rely upon it in making their initial stop.

However, that is now a dead issue. Given Judge Homme's ruling and his memo to the Mayor, any further DUI arrests where the particularized suspicion arose either due to exceeding the 15 mph speed limit in a school zone or from observations made after a traffic stop made for exceeding the 15 mph limit in school zones are not going to be able to rely upon the "good faith" exception to the exclusionary rule. In addition, it appears that no engineering and traffic investigation was used to establish the school zone speed limits. It is only a matter of time before a competent defense attorney raises that issue.

My recommendations are as follows:

1. The City Council, by resolution, should establish 15 mph zones on those portions of designated arterial streets (defined in Ordinance No. 1231) that are in the vicinity of schools or in other locations, such as parks, where a reduced speed limit is appropriate. These zones should be marked simply as 15 mph zones and not as "school zones". Please note that not every street adjacent to a school is designated as an "arterial street" in Ordinance No. 1231.
2. MCPD should cease basing DUIs on observations made after a traffic stop for exceeding the speed limit in a "school zone" unless the vehicle is exceeding the 25 mph general speed limit or is exceeding a 15 mph speed limit established by the Council on an arterial street that is signed simply as a 15 mph limit and not as a school zone.
3. Be very clear that I am not suggesting that officers not stop vehicles in school zones if they have particularized suspicion that the driver is under the influence other than that they are driving faster than 15 mph and less than 25 mph. For example, if they are weaving, driving over the center line, driving against the curb, driving erratically, driving without lights at night, or similar indications of impairment, they should be stopped on a particularized suspicion basis. However, unless they are going more than 25 mph in the marked school zone, the officer should not use their speed in the school zone as a particularized suspicion factor nor should the officer issue the person a ticket for exceeding the school zone speed limit at the time that they effect a DUI arrest. If it is during school hours and there are children present in or near the street and the person is driving 25 mph there may also be a supportive argument that they are violating the careless driving laws due to the surrounding conditions. In that case, the officer should use a careless driving stop as the initial basis rather than a school zone speed infraction.
4. If the City Council wishes to continue with enforcement of school zone speed limits, then they should have the engineering and traffic investigation conducted as required by 61-8-310, and assuming the investigation warrants the lower speed limit, establish that limit by resolution on designated streets adjacent to schools. Signs should then be erected that conform with the signage requirements for school zones, specifically referencing the penalty for violation of the speed limit.
5. If the City has already conducted the engineering and traffic investigation to provide a basis for the school zone speed limits, then those investigations should be identified and retained and conforming signage added in school zones.

George W. Huss

Brown and Huss, P.C.

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**6 attachments**

 **Homme Memo 10-17-2012.pdf**  
19K

 **61-8-310.pdf**  
122K

 **Streets - Speed limits - statutory requirements to reduce.pdf**  
42K

 **Grenz e-mail 2-15-2012.pdf**  
51K

 **Grenz e-mail 1-6-2012.pdf**  
48K

 **Ordinance 1231 - Amending Sec. 22-2 of the City Code to Define Arterial Streets (as Amend. 2-14-12.pdf**  
12K

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Jeff Noble <prcoattorney@rangeweb.net>

Mon, Oct 22, 2012 at 5:32 PM

To: George Huss <bhpc@midrivers.com>, Butch Grenz <mayor@milescity-mt.org>, Doug Colombik <dcolombik@milescity-mt.org>

Cc: ericabhpc@midrivers.com, Jana Mueller <janabhpc@midrivers.com>

Jerry,

Thanks for the memo on the school speed zone issues.

I sent a memo out a while ago myself to the City Engineer on this subject. Perhaps you did not get a copy of it yet. I was aware of the engineering study issues, too.

However, I was not aware that the good faith exception may apply to this type of case. Good to know for future cases.

I agree with your points here. Let's hope that we can get this straightened out soon. The MCPD officers make a lot of stops in the school zones each year.

Jeff Noble

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**From:** George Huss [mailto:bhpc@midrivers.com]  
**Sent:** Monday, October 22, 2012 10:49 AM  
**To:** 'Butch Grenz'; prcoattorney@rangeweb.net; 'Doug Colombik'  
**Cc:** ericabhpc@midrivers.com; Jana Mueller  
**Subject:** School Zone speed limits

[Quoted text hidden]

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**Doug Colombik**< dcolombik@milescity-mt.org>  
To: Mark Reddick <markreddick@milescity-mt.org>

Wed, Nov 14, 2012 at 12:44 PM

[Quoted text hidden]

## Allen Kelm

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**From:** Mark Reddick  
**Sent:** Friday, October 26, 2012 8:25 AM  
**To:** Allen Kelm  
**Subject:** Fwd: DUI's in School Zones/READ!!!

----- Forwarded message -----

**From:** Doug Colombik <[dcolombik@milescity-mt.org](mailto:dcolombik@milescity-mt.org)>  
**Date:** Mon, Oct 22, 2012 at 10:55 AM  
**Subject:** DUI's in School Zones/READ!!!  
**To:** Barney Murnin <[bmurnin@milescity-mt.org](mailto:bmurnin@milescity-mt.org)>, Cameron Pavlicek <[cpavlicek@milescity-mt.org](mailto:cpavlicek@milescity-mt.org)>, Casey Prell <[cprell@milescity-mt.org](mailto:cprell@milescity-mt.org)>, Doug Colombik <[dcolombik@milescity-mt.org](mailto:dcolombik@milescity-mt.org)>, Eric Leggate <[eleggate@milescity-mt.org](mailto:eleggate@milescity-mt.org)>, Jason Bednar <[jbednar@milescity-mt.org](mailto:jbednar@milescity-mt.org)>, Jim Stacey <[jstacey@milescity-mt.org](mailto:jstacey@milescity-mt.org)>, Luke Smith <[lsmith@milescity-mt.org](mailto:lsmith@milescity-mt.org)>, Mark Reddick <[markreddick@milescity-mt.org](mailto:markreddick@milescity-mt.org)>, Nick Eisele <[neisele@milescity-mt.org](mailto:neisele@milescity-mt.org)>, Ryan Ketchum <[rketchum@milescity-mt.org](mailto:rketchum@milescity-mt.org)>, Steve Fenner <[sfenner@milescity-mt.org](mailto:sfenner@milescity-mt.org)>, tony isbell <[tony\\_isbell@hotmail.com](mailto:tony_isbell@hotmail.com)>, Travis Grealish <[tgrealish@milescity-mt.org](mailto:tgrealish@milescity-mt.org)>, Tyler Carleton <[tcarleton@milescity-mt.org](mailto:tcarleton@milescity-mt.org)>

Last week I was provided with a copy of a memorandum from City Judge Homme to Mayor Grenz concerning the Judge's dismissal of 2 DUIs where the initial stop was based upon exceeding the speed limit in a school zone. I am attaching a copy of that memorandum.

The memorandum incorrectly references 61-8-311 of MCA and references an amendment to it in 2011. The correct reference should be to 61-8-310, a copy of which I am attaching with the pertinent part highlighted in yellow. There was an amendment in 2011 to 61-8-310, but it did not affect the issue. It was a 2009 amendment that added the requirement that the signage state the penalty for violation. The Office of Public Defender attorney has apparently successfully raised this issue in the DUI prosecutions initially based upon exceeding the speed limit in a school zone.

However, even if the City were to change its signage in the school zones to state the penalty, there is still a basic problem with the speed limit in school zones in Miles City under §61-8-310. The initial sentence of that statute requires that the speed limit be set "...on the basis of an engineering and traffic investigation...". I don't believe there is a single school zone in Miles City where the speed limit was based upon an engineering and traffic investigation, and, if there is one, I don't believe the City could produce the engineering and traffic investigation that was the basis for the speed limit in that school zone.

I addressed this issue in 2007 in a memorandum to Mayor Whalen. I have attached a copy of that memorandum. This was also addressed in e-mails to Mayor Grenz in January and February of this year. See attached e-mail. To date, the Council has not acted further on this matter.

Pursuant to my recommendation, Mayor Grenz had me prepare an ordinance designating certain streets as arterial streets. That passed as Ordinance No. 1231. I am attaching a copy of that ordinance. 61-8-310(3) permits a local government to set speed limits on arterial streets and does not contain the prerequisite that those speeds be based upon an "engineering and traffic investigation". Therefore, it is my opinion that on arterial streets as designated by Ordinance No. 1231 the City Council can establish 15 m.p.h. zones. The City Council



did do that on Pearl Street from Montana to Jordan. This is a 15 m.p.h. signed zone, not a school zone. If the Council were to designate other portions of these arterial streets, they would also be 15 mph signed zones, rather than school zones.

Erica Griffith has researched the judge's conclusion that the 2 DUIs be dismissed and we do not agree with that conclusion assuming that the police officer did not know the signage in the school zone was defective. We believe the "good faith" exception set forth in *US. v. Leon*, 468 U.S. 897 (1984) and *Arizona v. Evans* 514 U.S. 1 (1995) and adopted by the Montana Supreme Court in *City of Cutbank v. Daniel Bird* 38 P3d 804, 307 Mont. 460 (2001) should have applied. The exclusionary rule is established to deter police misconduct. Here there was not police misconduct, but an error by city officials in not posting the penalty on the school zone signs. Unless the police officers knew the signage was defective, they should be able in good faith to rely upon it in making their initial stop.

However, that is now a dead issue. Given Judge Homme's ruling and his memo to the Mayor, any further DUI arrests where the particularized suspicion arose either due to exceeding the 15 mph speed limit in a school zone or from observations made after a traffic stop made for exceeding the 15 mph limit in school zones are not going to be able to rely upon the "good faith" exception to the exclusionary rule. In addition, it appears that no engineering and traffic investigation was used to establish the school zone speed limits. It is only a matter of time before a competent defense attorney raises that issue.

My recommendations are as follows:

1. The City Council, by resolution, should establish 15 mph zones on those portions of designated arterial streets (defined in Ordinance No. 1231) that are in the vicinity of schools or in other locations, such as parks, where a reduced speed limit is appropriate. These zones should be marked simply as 15 mph zones and not as "school zones". Please note that not every street adjacent to a school is designated as an "arterial street" in Ordinance No. 1231.
2. MCPD should cease basing DUIs on observations made after a traffic stop for exceeding the speed limit in a "school zone" unless the vehicle is exceeding the 25 mph general speed limit or is exceeding a 15 mph speed limit established by the Council on an arterial street that is signed simply as a 15 mph limit and not as a school zone.
3. Be very clear that I am not suggesting that officers not stop vehicles in school zones if they have particularized suspicion that the driver is under the influence other than that they are driving faster than 15 mph and less than 25 mph. For example, if they are weaving, driving over the center line, driving against the curb, driving erratically, driving without lights at night, or similar indications of impairment, they should be stopped on a particularized suspicion basis. However, unless they are going more than 25 mph in the marked school zone, the officer should not use their speed in the school zone as a particularized suspicion factor nor should the officer issue the person a ticket for exceeding the school zone speed limit at the time that they effect a DUI arrest. If it is during school hours and there are children present in or near the street and the person is driving 25 mph there may also be a supportive argument that they are violating the careless driving laws due to the surrounding conditions. In that case, the officer should use a careless driving stop as the initial basis rather than a school zone speed infraction.
4. If the City Council wishes to continue with enforcement of school zone speed limits, then they should have the engineering and traffic investigation conducted as required by 61-8-310, and assuming the investigation warrants the lower speed limit, establish that limit by resolution on designated streets adjacent to schools. Signs should then be erected that conform with the signage requirements for school zones, specifically referencing the penalty for violation of the speed limit.



5. If the City has already conducted the engineering and traffic investigation to provide a basis for the school zone speed limits, then those investigations should be identified and retained and conforming signage added in school zones.

*George W. Huss*

**BROWN AND HUSS, P.C.**

507 Pleasant Street

P.O. Box 128

Miles City, Montana 59301

## ORDINANCE NO. 1231

### AN ORDINANCE AMENDING SECTION 22-2(2) OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, MONTANA TO PROVIDE A DEFINITION AND DESIGNATION OF ARTERIAL STREETS WITHIN THE CITY OF MILES CITY.

**BE IT ORDAINED** by the City Council of the City of Miles City, Montana as follows:

**Section 1.** Section 22-2(2) of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

*“(2) Streets and roadway areas.*

*a. Arterial Street means any of the following designated streets:*

- (1) North 7th Street from its intersection with Hawley Street. to its intersection with Main Street.
- (2) Tatro Street from its intersection with North 7th Street to its intersection with Woodbury Street and continuing with Milwaukee Street from its intersection with Woodbury Street to its intersection with North Montana Avenue.
- (3) Woodbury Street from its intersection with Leighton Boulevard to its intersection with Roberts Street.
- (4) North Montana Avenue from its intersection with Main Street to its intersection with Jackson Street.
- (5) Leighton Boulevard from its intersection with North Haynes Avenue to its intersection with Washington Street and continuing with Washington Street to its intersection with North 2nd Street.
- (6) North 5th Street from its intersection with Main Street to its intersection with Marion Street.
- (7) North 9th Street from its intersection with Main Street to its intersection with Washington Street.
- (8) North 10th Street from its intersection with Main Street to its intersection with Washington Street.
- (9) Palmer Street from its intersection with North 7th Street to its intersection with North Montana Avenue.
- (10) Orr Street from its intersection with North 7th Street to its intersection with Leighton Boulevard.
- (11) Pleasant Street from its intersection with North 7th Street to its intersection with North Montana Street.
- (12) North Strevell Avenue from its intersection with Main Street to its intersection with Leighton Boulevard.
- (13) North Stacy Avenue from its intersection with Main Street to its intersection with Leighton Boulevard.
- (14) South Winchester Avenue from its intersection with Main Street and merging with South Cale Avenue continuing to its intersection with Wilson Street.
- (15) South Strevell Avenue from its intersection with Main Street to its intersection with Balsam Drive.
- (16) Wilson Street from its intersection with South Haynes Avenue to its intersection with South Strevell Ave.
- (17) Wibaux Park Drive from its intersection with South Winchester Avenue to its intersection with South Strevell Avenue.
- (18) Fort Street from its intersection with South Montana Avenue to its intersection with South Strevell Avenue.

- (19) South 10th Street from its intersection with Main Street to the point it merges with Pearl Street and continuing to Pearl Street's intersection with South Strevell Avenue.
- (20) South 8th Street from its intersection with Main Street to the point it merges with Stower Street and continuing to its intersection with South Haynes Avenue.
- (21) Tompy Street from its intersection with South Montana Avenue to its intersection with South Haynes Avenue.
- (22) Stower Street from its intersection with South Montana Avenue to its intersection with South Haynes Avenue.
- (23) South Lake Avenue from its intersection with Main Street to its intersection with Pearl Street.
- (24) South Center Avenue from its intersection with Main Street to its intersection with Pearl Street.
- (25) South Montana Avenue from its intersection with South Center Avenue to its intersection with Tompy Street.
- (26) South 5th Street from its intersection with Main Street to its intersection with Pacific Avenue.
- (27) South 4th Street from its intersection with Main Street, inclusive of the service road through Riverside Park, to its intersection with Eagle Avenue.
- (28) Yellowstone Avenue from its intersection with South 10th Street to its intersection with Neu-Vu Avenue
- (29) Pacific Avenue from its intersection with South 8th Street to its intersection with the Tongue River Bridge.
- (30) Atlantic Avenue from its intersection with South 10th Street to its intersection with Neu-Vu Avenue.
- (31) Bridge Street from its intersection with South 5th Street to its intersection with South Montana Avenue and then northerly on South Montana Avenue to its intersection with Main Street.
- (32) Main Street from its intersection with the Tongue River Bridge to its intersection with South Haynes Avenue.
- (33) South Haynes Avenue from Leighton Boulevard to its intersection with Interstate Highway 94.

b. *Controlled access highway* means every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway.

c. *Crosswalk* means:

- (1) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway.
- (2) Any portion of a roadway, at an intersection or elsewhere, distinctly indicated for pedestrian crossing by lines or other markings on the surface.

d. *Intersection* means the area embraced within the prolongation or connection of the lateral curblines or, if none, then the lateral boundary lines of the roadways, of two streets which join one another at or approximately at right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. Where a street includes two roadways 30 feet or more apart,

then every crossing of each roadway of such divided street by an intersecting street shall be regarded as a separate intersection. In the event such intersecting street also includes two roadways 30 feet or more apart, then every crossing of two roadways of such streets shall be regarded as a separate intersection.

- e. *Laned roadway* means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.
- f. *Private road or driveway* means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.
- g. *Roadway* means that portion of a street improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a street includes two or more separate roadways, the term "roadway" as used in this chapter shall refer to any such roadway separately but not to all such roadways collectively.
- h. *Safety zone* means the area or space officially set apart within a roadway for the exclusive use of pedestrians, and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.
- i. *Sidewalk* means that portion of a street between the curblines or the lateral line of a roadway, and the adjacent property lines, intended for the use of pedestrians.
- j. *Street or highway* means the entire width between the boundary lines of every street, highway and related structure as have been or shall be built and maintained with appropriated funds of the United States and which have been or shall be built and maintained with funds of the state or the municipality, or which have been or shall be dedicated to public use or have been acquired by eminent domain.
- k. *Through street* means every street or portion thereof at the entrances to which vehicular traffic from intersecting streets is required by law to stop before entering or crossing the same when stop signs are erected as provided in this chapter.

**Section 2.** This amendment shall become effective thirty (30) days after the final passage of this Ordinance.

Said ordinance read and put on its passage this 24th day of January, 2012.

\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

\_\_\_\_\_  
Rebecca Stanton, City Clerk

**FINALLY PASSED AND ADOPTED** this 14th day of February, 2012.

\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

\_\_\_\_\_  
Rebecca Stanton, City Clerk

COPY

1 JEFFREY A. NOBLE  
2 City Prosecutor  
3 City of Miles City  
4 P.O. Box 910  
5 Miles City, Montana 59301  
6 Tel. (406) 436-2365  
7 Tel. (406) 874-8619

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IN THE CITY COURT OF MILES CITY, STATE OF MONTANA,  
BEFORE HON. AL HOMME, CITY COURT JUDGE

---

CITY OF MILES CITY,  
Plaintiff,

vs.

PADRAIG BARRON,  
Defendant.

Cause No. TK 2012-339

**CITY'S BRIEF IN RESPONSE  
TO DEFENDANT'S MOTIONS**

---

COMES NOW the City of Miles City, by and through Jeffrey A. Noble, Dep. City Attorney, and hereby submits the following brief in this case in response to the Defendant's *Motion to Suppress and Motion in Limine*, as follows.

Issues related to Posting of Speed Limit Signs. The Defendant has cited what appears to be a 2003 decision issued by District Court Judge Mark Guenther, which has been attached to the Defendant's motion. The City would like to remind the court that such District Court decisions are not binding upon this court in the fashion that decisions of the Montana Supreme Court are. Thus, while the Defendant can certainly bring this 2003 ruling to the court's attention in the case at hand, this court is not mandated to follow the ruling made in that 2003 Gallatin County case.

The undersigned counsel believes that the Miles City speed limit signs now in place at the location of this incident were erected a number of years ago, and at the time of their placement, were placed there in accordance with the applicable state statutes at that time. Attached hereto is a copy of the 2009 version of Mont. Code Ann. Sec. 61-8-301, and one can see that the 2009 version of this statute does not contain subsection (4)(b), which contains the 2011 provisions mentioned by the Defendant that apparently require some cities and towns to erect school zone signs which:

- Conform to the Department's current manual;
- Give notice that the school zone has been entered;
- Give notice of the altered speed limit and the penalty provided by law; and
- Give notice where the speed zone has ended.

The City contends that the school speed zone signs now in place at this location on Leighton Boulevard were in compliance with this 2009 (or earlier) statute at the time they were placed there, and thus the Defendant's motion should not be granted.

Counsel for the City will also inquire with the City Engineer's Office to determine if any engineering study was performed at the time of installation of said signs.

H.G.N. Testing and Officer's Qualifications. The Defendant has also claimed that MCPD Officer Ryan Ketchum does not hold sufficient qualifications, training, and experience to testify in court regarding the H.G.N. test which was performed at the time of the Defendant's arrest.

On this date, Officer Ketchum is currently attending the Montana Law Enforcement Academy, and he is unable to discuss this issue with Mr. Noble at this time.


While Mr. Noble is aware of some of this officer's qualifications, Mr. Noble will have to discuss this issue with Officer Ketchum to become fully aware of his qualifications on this subject.

Need to Continue Hearing and Trial. As the court is aware, Officer Ketchum will not be returning to Miles City until early December, 2012. Thus, the City hereby requests that the hearing in this case be set for mid-December, so that the officer can attend in person.

Mr. Noble discussed this matter with Ms. White on this date, and Ms. White stated that she would request her client to sign a Waiver of Speedy Trial soon, if needed for this purpose.

In conclusion, the City objects to the Defendant's motion filed in this matter, and it will provide additional information on this issue to the court when it becomes available.


Dated this 20<sup>th</sup> day of September, 2012.

  
JEFFREY A. NOBLE  
Powder River County Attorney

### CERTIFICATE OF SERVICE

I, Jeffrey A. Noble, do hereby certify that on the 20th day of September, 2012, I served the following with a true and complete copy of the foregoing document, by placing said copy in the U.S. Mail, first class mail, postage prepaid, addressed to:

Kristine White, Attorney  
P.O. Box 1767  
Miles City, MT 59301

  
Jeffrey A. Noble

Jones v.  
93 Mont.  
5(48)

established upon formal approval by the commission. The temporary special reduced or increased speed limit remains in effect until a complete traffic and engineering study has been done on the route or route segment and the commission has made a determination on changing the speed limit.

(2) The department of transportation shall erect and maintain appropriate signs giving notice of special limits. When the signs are erected, the limits are effective for those zones at all times or at other times that the commission sets.

(3) The authority of the commission under this section includes the authority to set reduced nighttime speed limits on curves and other dangerous locations.

(4) This section does not authorize the commission to set a statewide speed limit.

Enacted by Laws 1955, ch. 263, § 42; amended by Laws 1959, ch. 204, § 1; amended by Laws 1961, ch. 178, § 1; amended by Laws 1974, ch. 316, § 56; Revised Code of Montana 1947, 32-2145; amended by Laws 1991, ch. 512, § 3; amended by Laws 1995, ch. 73, § 1; amended by Laws 1997, ch. 206, § 1; amended by Laws 1999, ch. 43, § 4; amended by Laws 2001, ch. 93, § 1.

Library References

Automobiles 331.  
Westlaw Key Number Search: 48Ak331.  
C.J.S. Motor Vehicles §§ 1358, 1435 to 1453.

61-8-310. When local authorities may and shall alter limits

(1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 65 miles an hour during the nighttime;

(c) decreases the limit outside an urban district, but not to less than 35 miles an hour; or

(d) decreases the limit in an area near a school, a senior citizen center, as defined in 23-5-112, or a designated crosswalk that is close to a school or a senior citizen center to not less than 80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but not less than 15 miles an hour. If warranted by an engineering and traffic investigation, a local authority may adopt variable speed limits to adapt to traffic conditions by time of day, provided that the variable limits comply with the provisions of 61-8-206.

(2) A board of county commissioners may set limits, as provided in subsection (1)(c), without an engineering and traffic investigation on a county road.



(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309.

Enacted by Laws 1955, ch. 263, § 43; amended by Laws 1971, ch. 89, § 1; amended by Laws 1974, ch. 316, § 57; Revised Code of Montana 1947, 32-2146; amended by Laws 1985, ch. 614, § 2; amended by Laws 1991, ch. 686, § 1; amended by Laws 1993, ch. 213, § 1; amended by Laws 1995, ch. 287, § 3; amended by Laws 1999, ch. 43, § 5; amended by Laws 2005, ch. 542, § 198.

#### Library References

Automobiles ⇨ 5(4), 318, 331.

Westlaw Key Number Searches: 48Ak5(4);  
48Ak318; 48Ak331.

C.J.S. Motor Vehicles §§ 35, 43 to 44, 47 to  
48, 50, 63 to 68, 1358, 1435 to 1453.

#### Notes of Decisions

In general 1  
Admissibility of evidence 5  
Instructions 6  
Municipal corporations 2  
Ordinance violations 3  
Pleadings 4

##### 1. In general

That ordinance establishing speed limit declared rule of evidence held not to affect validity of ordinance or rule respecting prima facie evidence of negligence in district court (Rev. Codes 1921, § 1742, and § 5039, subd. 10). *Marinkovich v. Tierney*, 1932, 93 Mont. 72, 17 P.2d 93. Automobiles ⇨ 9

##### 2. Municipal corporations

City held authorized to regulate speed and traffic within corporate limits (Rev. Codes 1921, § 1742, and § 5039, subd. 10). *Marinkovich v. Tierney*, 1932, 93 Mont. 72, 17 P.2d 93. Automobiles ⇨ 5(4)

Statutory proviso that cities may regulate speed and traffic on streets by ordinance delegates legislative authority (Rev. Codes 1921, § 1742). *Carey v. Guest*, 1927, 78 Mont. 415, 258 P. 236. Municipal Corporations ⇨ 703(1)

##### 3. Ordinance violations

Driving automobile in violation of speed ordinance is negligence per se (Rev. Codes 1921, § 1742 and § 5039, subd. 10). *Marinkovich v. Tierney*, 1932, 93 Mont. 72, 17 P.2d 93. Automobiles ⇨ 168(2)

##### 4. Pleadings

Automobilist could plead ordinance permitting speed of 12 miles an hour, where pedestrian sued on theory statute limited speed to 6 miles (Rev. Codes 1921, § 1743, subd. 4). *Carey v. Guest*, 1927, 78 Mont. 415, 258 P. 236. Automobiles ⇨ 9

##### 5. Admissibility of evidence

In action for automobile collision, maximum speed ordinance held admissible, though declaring rule of evidence not binding upon district court (Rev. Codes 1921, § 1742, and § 5039, subd. 10). *Marinkovich v. Tierney*, 1932, 93 Mont. 72, 17 P.2d 93. Automobiles ⇨ 243(7)

##### 6. Instructions

Where action was grounded on city speed ordinance alone, and evidence did not necessarily show reckless driving, instruction on statutory mandate respecting speed held improper (Rev. Codes 1921, § 1742). *Marinkovich v. Tierney*, 1932, 93 Mont. 72, 17 P.2d 93. Automobiles ⇨ 246(56)

61-8-31

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Automobiles ⇨  
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STATE STATUTES &  
CODES

Statutes > Montana > TITLE 61. MOTOR VEHICLES > CHAPTER 8. TRAFFIC REGULATION > Part 3. Vehicle Operating Requirements > 61-8-310. When local authorities may and shall alter limits or establish or alter area of school zone.

**61-8-310. When local authorities may and shall alter limits or establish or alter area of school zone.**

Alabama  
Alaska  
Arizona  
Arkansas  
California  
Connecticut  
Delaware  
District of Columbia  
Florida  
Georgia  
Hawaii  
Idaho  
Illinois  
Indiana  
Iowa  
Kansas  
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Louisiana  
Maine  
Maryland  
Massachusetts  
Michigan  
Minnesota  
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Nebraska  
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New Hampshire  
New Jersey  
New Mexico  
New York  
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2011  
Version

ads

**61-8-310. When local authorities may and shall alter limits or establish or alter area of school zone.** (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 65 miles an hour during the nighttime;

(c) decreases the limit outside an urban district, but not to less than 35 miles an hour, or

(d) decreases the limit in a school zone or in an area near a senior citizen center, as defined in 23-5-112,

or a designated crosswalk that is close to a school or a senior citizen center to not less than 80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but not less than 15 miles an hour. If warranted by an engineering and traffic investigation, a local authority may adopt variable speed limits to adapt to traffic conditions by time of day, provided that the variable limits comply with the provisions of 61-8-206.

(2) A board of county commissioners may set limits, as provided in subsection (1)(c), without an engineering and traffic investigation on a county road.

(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) (a) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(b) If a local authority decreases a speed limit in a school zone, the local authority shall erect signs conforming with the manual adopted by the department of transportation under 61-8-202 giving notice that the school zone has been entered, of the altered speed limit and the penalty provided in 61-8-726, and that the school zone has ended.

(5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309.

(6) A local authority establishing or altering the area of a school zone shall consult with the department of transportation and the commission if the school zone includes a state highway or a federal-aid highway or extension of a federal-aid highway.

(7) A local authority shall consult with district officials for a school when:

Pennsylvania  
Rhode Island  
South Carolina  
South Dakota  
Tennessee  
Texas  
Utah  
Vermont  
Virginia  
Washington  
West Virginia  
Wisconsin  
Wyoming

(a) establishing or altering the area of a school zone near the school; or  
(b) setting a speed limit pursuant to subsection (1)(d) in a school zone near the school.

**History:** En. Sec. 43, Ch. 263, L. 1955; amd. Sec. 1, Ch. 89, L. 1971; amd. Sec. 57, Ch. 316, L. 1974; R.C.M. 1947, 32-2146; amd. Sec. 2, Ch. 614, L. 1985; amd. Sec. 1, Ch. 686, L. 1991; amd. Sec. 1, Ch. 213, L. 1993; amd. Sec. 3, Ch. 287, L. 1995; amd. Sec. 5, Ch. 43, L. 1999; amd. Sec. 198, Ch. 542, L. 2005; amd. Sec. 2, Ch. 83, L. 2009.

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1 Office of the State Public Defender – Region 11  
2 Ms. Sheila M. Newman, Regional Deputy Public Defender  
3 Ms. C. Kristine White, Assistant Public Defender  
4 PO Box 1767  
5 11 South 7<sup>th</sup> Street, Suite 100  
6 Miles City MT 59301  
7 406-234-1702  
8 406-234-1708 fax  
9 Counsel for Defendant

10 **IN THE MILES CITY COURT, CUSTER COUNTY, STATE OF MONTANA**  
11 **BEFORE THE HONORABLE AL HOMME, CITY JUDGE**

12 <b>CITY OF MILES CITY,</b> 13 <b>Plaintiff,</b> 14 <b>-vs-</b> 15 <b>PADRAIG BARRON,</b> 16 <b>Defendant.</b>	17 <b>Case No. TK-2012-339</b>  18 <b>MOTION TO SUPPRESS</b> 19 <b>AND MOTIONS IN LIMINE</b>
--	---

20 **COMES NOW**, Padraig Barron, Defendant, by and through counsel, and hereby moves  
21 this Court to suppress the evidence and dismiss the case as set forth below. Defendant is  
22 currently charged with DUI pursuant to MCA §61-8-401(1)(a) or in the alternative, a DUI  
23 pursuant to MCA§ 61-8-406(1)(a); Driving While Suspended pursuant to MCA §61-5-212(1)(i)  
24 and Speeding pursuant to MCA §61-8-310(1)(d). All of these offenses are alleged to have  
25 occurred in the 1700 block of Leighton Boulevard, Miles City, Custer County, Montana.

26 **I.**  
27 **FACTS**

28 On April 14, 2012 at approximately 0113 hours, Officer Ketchum was parked in his  
patrol vehicle on the 1500 block of Leighton Blvd with his vehicle pointed east when he noticed  
a vehicle make a right hand turn from North Montana onto Leighton Blvd. traveling east. Officer  
Ketchum stated the vehicle appeared to be traveling faster than the fifteen mile an hour speed  
limit for the school zone. Officer Ketchum then confirmed the speed of the vehicle with his

1 radar. Officer Ketchum had tested the radar at the beginning of his shift. The radar indicated that  
2 the vehicle's speed was twenty eight miles per hour.

3 As the vehicle passed Officer Ketchum's location, Officer Ketchum pulled behind the  
4 vehicle. Officer Ketchum initiated his emergency lights and performed a traffic stop. After the  
5 vehicle was stopped Officer Ketchum identified the driver as Padraig Barron. Officer Ketchum  
6 ran Barron's name with dispatch. Barron "came back" with a suspended drivers license with a  
7 pick up and hold on the license.

8 While speaking to Barron Ketchum indicated that he observed an odor of an alcoholic  
9 beverage. When questioned by the officer, Barron admitted he had been drinking. Barron was  
10 also observed to have slurred speech, glazed eyes. When asked, Barron agreed to submit to a  
11 series of field sobriety tests, which included the HGN test.

12 **II.**  
13 **ABSENT PROPER POSTING THE SPEED LIMIT IS UNENFORCEABLE**

14 By virtue of Montana Code Annotated § 61-8-310, the speed limit in all urban areas of  
15 Miles City is 25 mph unless otherwise designated. MCA § 61-8-310 (1)(d) allows a local  
16 authority, like the City of Miles City, to decrease that speed limit in a school zone if it finds that  
17 the 25 m.p.h. speed limit is not reasonable and safe. However, this decrease is not effective or  
18 enforceable until all appropriate signs are posted, see MCA § 61-8-310 (4)(b). The Court agreed  
19 in *Schlepp v. Postma*, 2003 ML 2544, attached.

21 The appropriate signage required for a speed zone to be enforceable are set forth in by  
22 MCA § 61-8-310 (4) and also refer to the signage required as set forth in the Manual on Uniform  
23 Traffic Control Devices (MUTCD), the relevant portion which is attached hereto, as adopted in  
24 the Montana Codes Annotated pursuant to MCA §61-8-202.

26 The requisite signage includes signs warning the Defendant that he was nearing a school  
27 zone, entering a school zone, what hours the speed restrictions were in effect, the penalty for  
28 violating the speed restrictions and that he was leaving the school zone. The only sign present is

1 a 15 mph school zone sign at the beginning and end of the approximately one and one-half block  
2 length "school" zone. By the time the driver reacts to seeing the 15 mph zone sign, it's too late to  
3 reduce speed and results in the driver being detected speeding.  
4

5 Further, MCA 61-8-310(1)(d) requires any reduction in speed zones to be based upon an  
6 engineering study of the area affected. The City must lay a foundation to prove that the requisite  
7 engineering study was done and that the speed restriction was properly implemented. According  
8 to the Defendant's initial research, there is no independent engineering study on file with the city  
9 of Miles City that would justify the altered speed zone. The City would have to introduce  
10 evidence of such a study in effect at the time of this arrest in order to validate the stop.  
11

12 Additionally in this particular case is the fact that the officer failed to include on the face  
13 of the ticket that the basis for the stop was speeding. There is also no radar unit number cited in  
14 the discovery to be able to ascertain with certainty the accuracy and related certification of the  
15 radar unit.  
16

17 Absent an enforceable school zone, and no inclusion of speeding on the ticket, there was  
18 no probable cause for the stop and all ensuing evidence obtained must be excluded.  
19

20 **II.**  
21 **TESTIMONY REGARDING HGN TESTS AND RESULTS SHOULD BE EXCLUDED**

22 "Before HGN tests can be introduced into evidence, a qualified expert must explain the  
23 underlying scientific basis of the correlation between alcohol consumption and nystagmus." *State*  
24 *v. Van Kirk*, 2001 MT 184, ¶27, 306 Mont. 215, 222, 3 P.3d 735, 744. (emphasis added and  
25 citing *Hulse v State. Dept. of Justice*, 1998 MT 103, ¶72, 289 Mont. 1, ¶ 72, 961 P.2d 75, ¶72).  
26

27 The Supreme Court's message is clear: a pre-condition for even introducing HGN results is a  
28 proper explanation of their scientific basis.

1 The Court in *Van Kirk* noted regarding the lack of qualifications of an officer to explain  
2 the HGN test results:

3  
4 Officer Kelly has a bachelor's degree in medical technology and worked as a lab  
5 Supervisor and technician at Montana State Hospital. Officer Kelly was certified  
6 to administer the HGN test and he testified that he properly administered the test  
7 to **Van Kirk**. However, nothing in evidence establishes that officer Kelly was  
8 specially trained or educated, or that he had adequate knowledge to qualify him as  
9 an expert able to explain the correlation between alcohol consumption and  
10 nystagmus, the underlying scientific basis of the HGN test.

11 Id. ¶28.

12 In *Hulse*, the Court concluded that the arresting officer, having received 40 hours of  
13 training on various field sobriety tests, was qualified to administer and evaluate the test but was  
14 not qualified to explain the underlying scientific basis for the reliability of the test, ¶¶71-72.

15 Subsequent to *Van Kirk*, the Montana Supreme Court in *State v. Crawford*, 2003 MT 118,  
16 315 Mont 480 affirmed what qualifications are needed to provide expert testimony regarding the  
17 scientific validity of the HGN test and has been since followed by the Court in *State v. Harris*  
18 2008 MT 213, and *State v. Bollman* 2012 MT 49. The Court in *Bollman*, following its ruling in  
19 *Crawford*, succinctly set forth the qualifications, in varying combinations, that it found to be  
20 significant in determining if an officer was qualified as an expert: years as a law enforcement  
21 officer, relevant college degrees and/or court work; DUI and impairment training, including  
22 administration and evaluation of SFSTs; certification as a SFST instructor; certification as a drug  
23 recognition expert (DRE); specialized training in eye anatomy and the science behind HGN;  
24 study in these areas; and previous qualification as an expert in the underlying scientific basis for  
25 the HGN test.

26  
27 *Bollman*, *Crawford*, *Van Kirk* and *Hulse* thus establish a spectrum of expertise against  
28 which courts can measure a law enforcement officer's ability to explain the underlying scientific



1 basis of the correlation between alcohol consumption and nystagmus, which, again, is a  
2 precondition to even giving HGN results. At one end of the spectrum, which should be labeled  
3 "Insufficient Expertise," are law enforcement officers whose qualifications are similar to those  
4 condemned as insufficient in *Van Kirk* and *Hulse*. At the other end of the spectrum, which should  
5 be labeled "Sufficient Expertise," are law enforcement officers whose qualifications are similar  
6 to those lauded as sufficient in *Bollman* and *Crawford*.

8 In this case, the City has not listed any expert witnesses to testify about the HGN nor has  
9 it provided information of sufficient expertise by Officer Ketchum that would qualify him as an  
10 expert. Without expert testimony the City cannot provide evidence of the correlation between  
11 the results of the HGN test and alcohol.

13 Admitting into evidence the fact that law enforcement officers administered the test  
14 inherently infers that the tests were a factual basis in determining whether Barron was  
15 intoxicated. Any mention that a HGN test was administered would negate the result of any ruling  
16 that the HGN test results should be excluded. Any and all references to the HGN test must be  
17 excluded.

19  
20 **IV.**  
**REQUEST FOR HEARING**

21  
22 Defendant respectfully requests a hearing in this matter.

23 WHEREFORE, the Defendant respectfully requests that the evidence obtained from the  
24 stop be suppressed and the charges be dismissed.

25 DATED this \_\_\_\_ day of September, 2012.

26 Respectfully Submitted,

27  
28 \_\_\_\_\_  
C. Kristine White  
Assistant Public Defender



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CERTIFICATE OF SERVICE

The undersigned certifies that on the \_\_\_\_\_ day of September, 2012, a true and correct copy of this document was \_\_\_\_\_ emailed \_\_\_\_\_ faxed \_\_\_\_\_ mailed \_\_\_\_\_ hand delivered to the following:

Jeff Noble  
City Attorney  
PO Box 910  
Miles City, MT 59301

---

**John Uden**

---

**From:** "Doug Colombik" <dcolombik@milescity-mt.org>  
**Date:** Wednesday, November 14, 2012 1:53 PM  
**To:** "John Uden" <uden88@midrivers.com>  
**Subject:** Re: Dispatch staffing change needed  
John,

Please read below. We need to have a meeting. Thanks,

Chief

On Wed, Nov 14, 2012 at 1:52 PM, Doug Colombik <dcolombik@milescity-mt.org> wrote:  
Mayor,

We are starting to have major issues with retention at Dispatch. Please read Dispatch Supervisor Roos' message. We need to have a meeting to discuss how to cut out the shortage of dispatchers. I think Heather is on the right course of action as far as being able to properly staff dispatch. I would think at least one more full time position will alleviate the shortage issues. We will be paying out a ton in overtime very soon.

Chief

----- Forwarded message -----

**From:** **Heather Roos** <hroos@milescity-mt.org>  
**Date:** Fri, Nov 2, 2012 at 12:29 PM  
**Subject:** Dispatch staffing change needed  
**To:** Doug Colombik <dcolombik@milescity-mt.org>

Chief Colombik,

Could you please forward this as soon as possible to the Public Safety Committee?

Currently our dispatch center has 5 full time dispatchers (including myself) and three part time dispatchers. The part time dispatch positions are scheduled for a minimum of 8 hrs a week, up to 40 hrs (if there is a full time dispatcher on leave). It is not frequent that they work 40 hrs, in fact it's quite sporadic. We currently have two part time dispatchers at 50% and one at 38%. Over the past two years we have hired and lost five part time employees. The cost of hiring and training a dispatcher costs approximately \$5000. The dispatch center is having difficulty retaining part time dispatchers as the hours are not guaranteed and it is required that they are available for last minute call out to fill in shifts. So part time employees

11/14/2012

are quitting due to the need for more hours and benefits or they are getting additional jobs to compensate which makes them unavailable to fill in dispatch shifts. This has been a continual problem with the part time positions.

Right now the dispatch center has one part time vacancy and is expected to have another in January. The position was posted at City Hall and Job Service for ten days and we had one applicant, who was called right away and she had already received a full time job elsewhere.

At the beginning of this fiscal year, I requested additional funding in the dispatch budget of \$50,000 to increase the part timers hours and overlap to have two dispatchers during peak hours in the center. The council recognized the need, however did not approve the funding. There is an urgently growing need for a 2nd dispatcher on duty, not only for customer service quality but for the safety of our community and officers. The dispatch center call volume has grown to almost 6,000 calls a month and is continuing to increase, largely due to the oil boom issue. Having one person handle this type of call volume, as well as radio traffic, window traffic, paper work, and transcriptions becomes a huge liability for the city and creates an extreme risk putting the public in danger when they can't get the type of help at the speed they need for emergencies. Our city is seeing not only an increase in crime rate but also crime severity. No citizen wants to be put on hold during what they believe is emergent so a dispatcher can handle another emergency that is happening simultaneously.

There is a possible solution to these issues. If we restructure the dispatch employees and no longer have the three part time positions and instead create two full time positions to replace these part time positions then we would not only be able to better retain staffing but could have some overlap with two dispatchers on at times. This will only work with two full time positions added. The projected cost of this structure change is approximately \$32,247.87 however in the long run I really believe it will save the city money in hiring, training, retention, over time, and liability.

The call volume is increasing however mostly with out of state cell phone numbers calling, which means our state is not receiving additional 911 funds through the phone bills. Our 911 board funds two full time dispatch positions at this time and supports the majority of the costs and functions of operating our center. The total amount spent of 911 funds last fiscal year totalled \$208,706 and our estimated 911 income for this fiscal year is \$209,400. 911 can not support anymore employees, the little bit of cash carryover that they have every year needs to be saved in case of an emergency involving our center or the ever rising cost and need for upgraded equipment that is an essential part of our dispatch center.

I am requesting to restructure of our dispatch employee positions and an increase to our employee wage budget in the amount of approximately \$33,000 to keep our community and our officers safe, as dispatch is their lifeline because dispatchers truly are the first, first responders.

If anyone has any questions, feel free to contact me.

Thank you for your time and consideration,

Heather Roos  
Dispatch Supervisor  
406-874-8638