

Distracted driver ordinance has gone overboard

It is time to pull the plug on the well-meaning, albeit it unenforceable and too invasive ordinance to take cell phones out of the hands of drivers in Cheyenne.

As Floyd Esquibel has found in the Wyoming Legislature, the language that will satisfy even those who support such a move is elusive.

From a straightforward, "let's take cell phones out of the hands of people driving," the ordinance has morphed into an overly broad, unnecessarily restrictive effort to require drivers to look straight ahead because any other activity on their part while they're driving could be deemed to be "distractive."

I know a guy who was rear-ended by a young woman who was busily talking on her cell phone and that by itself is almost enough for me to support an over-reaching ordinance now being discussed. But to add one more ordinance on the books that will be unenforceable and unenforced isn't going to do us any good. Deal with cell phones only and call me. No cell phone use while driving.

The first conviction will bring a reversal because the ordinance is vague - the definition of distracted driving is ambiguous. There are so many things other than those described that could be defined as distractive and so many of those named will be determined not to be distractive under every circumstance.

The subjective determination by a police officer will lead to the department not enforcing any part of the distractive driving ordinance - not even the portion that a majority of the residents might support - a cell phone ban. By broadening the

law to include undefinable "distracted" driving, everything will be lost.

CPD talking head Mark Munari says he knows 200 accidents were caused by cell phone use. Can he provide specifics? Of course not. There are no such records. Has he provided any facts about accidents caused by shaving, putting on make-up, breast feeding a baby, or switching a CD or cassette? And if there are no reported accidents attributed to eating french fries, why should all eating be prohibited? Sucking on a sore throat lozenge could be considered eating.

Former Laramie County Sheriff Pat Barrett has communicated his opposition of the ordinance to its sponsor, Jim Brown and three leading council members (Pierson, Collins and Rinne). Among Pat's advice to those four: "The proposed cell phone ordinance is, in my humble opinion, a waste of time and ridiculous on its face." And, "would not the offending arch-criminal have to admit to the police officer just exactly what it was that distracted him or her? I mean distracted is distracted right? 'What made ya do it, lady?' And for Mark Munari to say that 200 accidents were caused by distracted drivers means what? Mr. Brown reads an article that says 25% of distracted driving accidents involve cell phones. I hope the CPD or DOT has these statistics." Pat also opines that Cheyenne police officers "want nothing to do with this boondoggle."

Pat Barrett hit the nail on the head. Jim Brown, don't try to salvage this Rube Goldberg ordinance. It has morphed into bad law. Withdraw it. Don't put another "dogs in the box" law on the books. Subjective laws are a poor idea.

Downtown Decimation Authority (DDA)

Amazingly, the destruction of downtown coincides with three other events.

- 1.) The DDA began to receive an obscene and unwarranted amount of money; and
- 2.) The DDA hired a full-time director; and
3. The arrival of Tom Segrave.

Before 2001, the DDA "struggled by" with about \$280,000 in annual revenue. Now, they are gifted about \$615,000 a year (excluding what they get from subleasing parking spaces in the downtown garage).

As of February 28, 2009, the DDA had \$680,000 of ready cash. Yet, nothing positive is happening in the downtown. In fact, the decimation continues with the demolition of an office building at 17th and Warren and the displacement of Stride Learning Center.

Thousands of brick pavers have found a home at the west end of the unused 15th surface parking lot. They came from the necessary removal along many downtown streets. What this group does often has to be undone. "Trees" are often nothing more than sticks protruding from

the ground. Lifeless and dangerous, these sticks could inflict serious injuries to anyone falling onto them.

Minutes of a recent DDA meeting reflect that a "Business Development" committee of Tom Segrave, Bob Bradshaw and Sami Falzone "reported that the task force committee was working closely with GSA and several developers to get the empty buildings in downtown occupied." Puhleezee!

Segrave sat listless and lifeless on the City Council for eight years while the downtown emptied. It emptied! He has his own business far out on Yellowstone. What the hell could he offer to recruiting new tenants for the downtown? Bradshaw and Falzone also have no experience in retail or leasing. Boy, talk about the inept leading the inept. This is a need that demands better leadership. Before joining the City Council, Segrave was a director on a Joint Powers Board that spent millions and accomplished nothing toward establishing a "World Class Transportation Museum" in the former UP depot. He has no discernible success record. None.

Sign ordinance change (Continued from page 12)

At the same time the City is defending its illegal action in approving a permit to erect a prohibited billboard at Pershing and Seymour, they are attempting to change the language of the Section of City Code they violated. A meeting of the Regional Planning Commission on April 9 will begin the process.

The notice for the meeting states the purpose is amending Title 17, Zoning, "by changing the definition of Off-premise sign in Section 17.04.040 and by adding additional language to Section 17.128.090 G, Off-premise signs."

City Code Section 17.148.100 now reads: "In case of a conflict between this zoning ordinance or any part of this ordinance, and any part of any other existing or **FUTURE ADOPTED ORDINANCE** of Cheyenne, Wyoming, or adopted resolution of Laramie County, Wyoming, the more restrictive provision in all cases shall apply." A new rule or new language won't get them off the hook. *(Bold mine)*

At one point in this dispute, former city attorney Claudia Angelos drafted the most impressive looking Motion to Dismiss. Her problem was that she objected to claims not stated in the Plaintiffs pleading. Once replaced by WARM attorneys (although this litigation is not about monetary damages), a Stipulated Disposition Regarding Motion to Dismiss dismissed her motion to dismiss.

This case is not about money. It is about a declaratory judgment which would require the permit to be rescinded and the billboard to be removed. *Void ab initio (I love those words!)*. So, it seems that even if the latest City ploy to change the zoning language after the fact is successful, that won't affect the litigation filed before the change was made. And if declaratory judgment is granted, the billboard has to come down. Could it be reconstructed? That would probably depend on the Court's ruling.

As the case plodded along, interesting

legal stunts have surfaced. Attorneys for NextMedia once filed a very bizarre motion. In that motion, they used the "I beg the Court for mercy for I am an orphan," defense after killing the parents. NextMedia said that if the Court found in favor of the Plaintiffs, the Defendant would be harmed. And, with that loss, the Plaintiffs should be responsible for those damages to the Defendant. Interesting twist. What that says is, "If we have to remove the billboard because the Plaintiffs proves we shouldn't have constructed it, it will cost us money and the Plaintiffs should have to pay us those costs." Even though the Court hasn't ruled on any of the motions to this date, that one will be easy. Plaintiffs: The loser is not entitled to come out the winner.

The City hopes to convince the District Court that what they "meant" should trump what they "did." The Wyoming Supreme Court has repeatedly stated: "If the language is sufficiently clear, we do not resort to the rules of construction." What the City said, regardless of what they may have *meant* or *intended* to do, was that no additional billboard could be built in the "zoned area" of the district.

The City has used every stalling tactic they could think of - very reminiscent of the *Cox v. City of Cheyenne* and *Cotton v. City of Cheyenne*. Throw a bunch against the wall and see what sticks. They lost both of those cases. They've tried to prevent the Plaintiffs use of declaratory judgment - the same unsuccessful tactic they attempted in *Cox v. City of Cheyenne*. There are similarities between *Cox* and this case. These neighbors are aggrieved parties to an illegal act by the City. The Supreme Court wrote in *Cox*, as to whether a declaratory judgment action is available to Plaintiffs: "A municipality has only the rights and powers granted by statute. Individuals are not similarly limited. Individuals have rights and powers independent of those created by statute." And, "... therefore, the declaratory judgments act is to be liberally construed and administered."

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