

# CHEYENNE HERALD

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*the local advocacy journal*

## Is the city governing body deciding while distracted?

A few years ago, when a city councilman was being offered help by another councilman, he admitted, "I don't know what I am thinking."

The way the current city council handled the issue of using a cell phone while driving reminded me of that admission.

And that departed councilman's honesty and forthrightness would be a welcome ingredient in city government.

For weeks, the council has labored over what should have been a simple question: Do we want to prohibit drivers in Cheyenne from using a cell phone as they drive? After several variations and going far asunder from that simple objective, the Ordinance rejected last Monday night (March 23, 2009) came to this.

### 10.24.170 DRIVING WHILE USING CELLULAR TELEPHONE PROHIBITIONS; EXCEPTIONS.

A. NO PERSON SHALL USE A CELLULAR TELEPHONE, FOR ANY PURPOSE, WHILE OPERATING A MOTOR VEHICLE UNLESS THE CELLULAR TELEPHONE IS SPECIFICALLY DESIGNED TO ALLOW HANDS-FREE OPERATION AND IS USED IN A HANDS-FREE MANNER.

The wording went on to allow use of a cell phone while "stopped" or parked or contacting an emergency service. It also provided a definition of a cell phone.

Voting "Yes" on this Ordinance were Amber Ash, Jim Brown, Georgia Broyles, Patrick Collins and Jack Spiker.

Voting "No" on this Ordinance were Rick Kaysen, Judy Case, Don Pierson and Mark Rinne.

Jimmy Valdez was absent.

The Ordinance also spelled out that a violation would be a misdemeanor with a fine of up to \$750.00. There is no reference to jail time and there is no mention that a citation could be issued as a primary offense. It would be a primary offense because the Ordinance does not state it would be a secondary offense. This is where "nothing means something."

Why, with the influential daily newspaper backing this Ordinance so strongly, did it fail? Well, to be honest, this is not a simple call. Many do want to ban cell phone use by drivers in moving vehicles.

But it took the sponsor and his supporters too long to reach that point. They offered up enough other things you couldn't do while driving that opponents had a field day making arguments against any prohibition, not just cell phone use.

It became easy to challenge: "Do you mean to tell me that I can't change my radio station or the position of my rear-view mirror as I drive?" Or, "Is chewing gum eating? Would chewing gum be a violation?"

Sadly, the real objective was subverted by the extraneous things thrown into the Ordinance as it moved along.

And then the local police chief had to admit at a public meeting that he had no statistical data to support the number of accidents his department had claimed were caused because of cell phone use. The simple fact that a driver was on the cell phone when someone else ran a red light in front of his/her car cannot be put on a list of "cell phone related accidents." That chapter may have been removed from the textbook used by Bob Fecht to "earn" his master's degree in criminal justice from Lacrosse University.

The daily muddied the waters by trying to convince those they formerly dominated that even hands-free cell phones had to be banned. They should have been satisfied to get a hands-on ban first, then push for a hands-free ban if good arguments could be made later for that ban.

Primary / secondary was the other bugaboo. Some in the public and probably some of the council would support a ban only if it were a primary offense but not if it were a secondary offense. Others felt exactly opposite.

The stated position here is that it must be a primary offense or there is no purpose in passing a ban. Any ban. I, for one, would lay down my cell phone if it were primary and wouldn't change a thing if it were secondary. And, remember, I do not have an office. I spend more time in my car than the average bear. My cell phone is an important aid in what I do but not a critical one. But I can pull over.

The "no" votes were more unexpected than the "yes" votes. Especially Rick and Mark. And with the need for only one more "yes" vote, the lobbying for Jimmy Valdez' vote, if Mark Rinne brings this matter up for reconsideration at the next

city council meeting on April 13th.

If it is brought back for reconsideration as the Ordinance that was defeated even though more council members voted for it than against it, 5-4 (it takes a majority of the elected body, not a majority of those in attendance), it could pass with Mark changing his vote from "no" to "yes" or by Jimmy Valdez being present and voting "yes." No one is bound by earlier votes.

If it came out that way, within a couple weeks Cheyenne would have a cell phone ban on drivers while underway.

However, Mark may bring the Ordinance back for consideration but want to amend it to be only a secondary offense. The sponsor, Jim Brown, has said he will not support such a change. There may others among the five who voted in support of the cell phone ban that did not pass for want of a single vote who also would not support such a change.

I would ask that they not.

Reconsideration requires a council member who voted on the prevailing side (in this case, the minority vote because the supportive side didn't have enough votes to pass the motion) to bring the motion back for reconsideration at the following meeting of the city council. That would mean Rick, Judy, Don or Mark could do it. Jimmy wasn't there but he can vote in for/against reconsideration and he can vote if the motion comes around again even though he didn't vote the first time.

Reconsideration can be used as a strategic parliamentary move. A member can vote against his own interest in the first pass so that he is on the prevailing side and can bring the motion back when there are more votes available and he thinks those votes would favor his position.

The vote for reconsideration takes a majority. That will happen. If Mark brings it back for reconsideration. Under Robert's Rules of Order, the issue is again debatable but it is not amendable.

In their (lack of) infinite wisdom, the 1994 city council (Pierson and Rinne were members) "modified" Robert's Rules of Order. In the Minutes of an October 5, 1994 meeting of the Committee of the Whole, Assistant City Attorney "Gerald Murray reported the ordinance loosens up the rules generally followed by the City Council in Robert's Rules of Order

relative to motions to reconsider. The ordinance makes it possible for any Council Member, together with a second (sic), to bring up a subject previously acted upon at the 'next available public meeting.' Present rules allow the reconsideration only at the same meeting."

That intent was drafted into Ordinance No. 3240. However, for reasons unknown to the City Clerk and undiscoverable by me, a paragraph beyond what it took to allow bringing actions back for reconsideration at the following meeting was added:

**"(C) THE GOVERNING BODY MAY AMEND THE LEGISLATION BEING RECONSIDERED UPON MOTION DULY MADE, SECONDED AND APPROVED BY A SIMPLE MAJORITY."**

Robert's, for very good reason, does not allow a reconsideration matter to be amended. Allowing amendments to the reconsideration motion creates a new motion, not reconsideration of one previously acted upon.

Under Robert's Rules of Order, Mark could bring the identical action back for reconsideration - the votes would likely be there to reconsider the motion and it would pass if Mark changed *his* vote or if Jimmy Valdez voted in favor, assuming the other votes remained as earlier cast.

Under the City's modification of 1994, Mark Rinne could ask for reconsideration of the motion not passed on a 5 in favor, 4 opposed vote, and then members could begin to amend it. Not that major changes would be adopted - they probably wouldn't - but the mischief possible by allowing amendments to a motion to be reconsidered is undeniable and unpredictable.

It is important that neither this city council nor successors to this council ever again modify Robert's Rules of Order. They lack the intellect, the understanding, the qualifications, the background and the education to make modifications to Robert's. This guide has served its intended purpose longer than any of us have been alive. It has been challenged, dissected and withstood the test of time. Common sense would tell you that being able to amend a motion being reconsidered makes absolutely no sense. The product of an amended motion is a new motion, not the old one being reconsidered. If someone wants to reintroduce a different cell phone ban, go for it but don't amend the motion already considered.

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