



CITY OF CHARLESTON WEST VIRGINIA



Council Member – ward 5

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Ordinance and Rules Committee, Chair
Parks and Recreation Committee

TO: Ordinance and Rules Committee
FROM: Jeanine Faegre, Chair
RE: Committee Meeting

A meeting of the Council Committee on Ordinance & Rules will be held on Monday, July 15, 2019. The meeting will begin promptly at 6:40 PM in the AV Room, 3rd Floor of City Hall.

Agenda

APPROVAL OF PREVIOUS MINUTES

1. 5-29-2019

RESOLUTIONS

1. Resolution No. 218-19 - Amending and reenacting Rule 14 of the Rules of Council in order to update the process for using a previous roll call to record a vote.

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JF/ns

MINUTES

ORDINANCE AND RULES COMMITTEE MEETING

5:30 P. M., MAY 29, 2019

COUNCIL CHAMBERS

Jeanine Faegre, Chairperson, called the meeting of the Charleston City Council Committee on Ordinance and Rules to order at 5:30p.m., MAY 29, 2019, in Council Chambers in City Hall.

Committee Members Present:

Jeanine Faegre, Chair
Bobby Haas, Vice Chair
Caitlin Cook
Chuck Overstreet
Courtney Persinger (arrived at 5:32)
Keeley Steele
Tiffany Wesley-Plear

1. Approval of Previous Minutes – Councilmember Cook moved to approve the minutes of the previous meeting on 4-30-2019. Councilmember Overstreet seconded. There was no objection and the minutes were approved.

1. Bill No. 7819 Committee Substitute –

Councilmember Faegre expressed appreciation for the public turnout, and noted that as this was not a public hearing, testimony from the public will not be taken. She introduced City Attorney, Kevin Baker, whose summary and explanation of the Committee Substitute is reproduced below:

The bill is based on a Colorado law that the Supreme Court of the United States found to be Constitutional after a thorough analysis of the First Amendment and privacy rights at issue. I want to be very clear about what the bill does, as I understand there has been some confusion. The bill creates two distinct prohibitions in relation to all health care facilities:

- First, it prohibits a person from knowingly obstructing another person's entry or exit from a health care facility.
 - This would include blocking a person from entering the building or blocking a car from entering or exiting the dedicated parking facility.

- Second, within a radius of 100 feet from an entrance door to a health care facility, it prohibits a person from knowingly approaching within 8 feet of another person to pass a leaflet, display a sign, or engage in oral protest.
 - It does not prohibit a person from protesting within the 100 foot radius, as long as they do not knowingly approach within 8 feet of another person.
 - It does not prohibit a person from protesting within the 100 foot radius if they do not approach another person.
 - So, if the protestor stays where they are on the public sidewalk and does not approach a person or obtains consent to approach the person, then it is not in violation.
 - It does not prohibit a person from protesting *and* approaching another person outside of the 100 foot radius in any way.

Both of these offenses are misdemeanors, punishable by up to 30 days in jail or up to a \$500 fine, or both. The bill applies equally to persons who are protesting for or against any medical procedure or other issue. It does not treat anyone differently based on their opinion on a topic. The bill applies to all health care facilities operating in the City that are licensed, certified, or permitted by law to administer health care services, medical treatment, or behavioral or mental health services in this state. This is because the Supreme Court found that municipalities have a substantial interest in controlling the activity around certain public and private places, including health care facilities. The people entering and leaving health care facilities have a right to privacy and a right to be left alone that is balanced in this bill against the first amendment rights of others. As mentioned, the language in this bill was specifically upheld by the Supreme Court of the United States. In addition to the misdemeanor penalties, the bill creates the ability for a person to bring a private right of action to recover damages and injunctive relief from any person who violates these provisions.

Finally, the first subsection of the bill includes language that is essentially a findings and declarations section. The committee substitute adopted tonight, which I have attached, made some changes in this subsection to the way the bill was originally introduced. I believe it is now clearer and I encourage you to read subsection (a) in the attached committee substitute.

Councilmember Faegre asked Chief of Police, Opie Smith, to speak. He stated that the CPD considers this a public safety issue as they have received numerous complaints. Everyone's safety is important. He believes this bill is a good compromise to make every person feel safe; their goal is to prevent any acts of violence from occurring.

Councilmember Persinger stated that if the bill is passed, then the only way it will work is if it's enforced by the CPD, which would require the presence of a police officer. He requested an explanation of what tools the police do not currently have to prevent disorderly conduct as it relates to the bill. Councilmember Keeley replied that the current ordinance was written in 1975, and that as a whole, it doesn't apply to 2019.

Councilmember Cook added that the current bill also lacks the tools the police force needs to do their jobs. Chief Smith stated that the proposed bill helps both sides in terms of safety and protection. Kevin Baker added that the use of force or some additional step is not always present in the circumstances that the proposed bill addresses. Additionally the fact that the spaces are near health care facilities is an important factor.

With no further discussion, Councilmember Cook made a motion to approve the bill. Councilmember Wesley-Plear seconded. With the ayes being in the majority with one (1) Nay, Bill No. 7819 Committee Substitute was approved.

YEAS: Faegre, Haas, Cook, Overstreet, Steele, Wesley-Plear

NAYS: Persinger

ABSENT: None

Councilmember Cook motioned to adjourn the meeting. Councilmember Overstreet seconded. Meeting adjourned.

Committee Substitute for Bill No. 7819

Introduced in Council:

May 20, 2019

Adopted by Council:

Introduced by:

**Caitlin Cook, Mary Beth Hoover, Keeley Steele,-
Naomi Bays & John Kennedy Bailey**

Referred to:

Ordinances & Rules

Committee Substitute for Bill No. 7819 - A BILL to amend the Code of the City of Charleston, by adding thereto a new section within Chapter 78, Article IV, designated 78-235, relating to access to health care facilities and picketing activities at health care facilities; preserving a right to protest; protecting patients from obstructions to their entry or exit from a health care facility; creating misdemeanor offenses for certain violations; and preserving a private right of action in addition to the criminal penalties.

Now, therefore, be it ordained by the Council of the City of Charleston:

That the Code of the City of Charleston be amended by adding thereto a new section within Chapter 78, Article IV, designated 78-235, to read as follows:

CHAPTER 78. – OFFENSES AND MISCELLANEOUS PROVISIONS.

ARTICLE IV. – OFFENSES INVOLVING PUBLIC PEACE AND ORDER.

DIVISION 3. – PICKETING.

Sec. 78-235. Protecting passage to and from health care facilities; preserving rights of picketers; offense and penalties.

(a) The City ~~Council of Charleston~~ recognizes that access to health care facilities for the purpose of obtaining medical counseling and treatment is imperative; ~~that the exercise of a person's First Amendment rights must be protected by the City subject to content-neutral time, place, and manner regulation~~; that the exercise of a person's right to protest or counsel ~~for or against certain~~ medical procedures must be balanced against another person's right to obtain medical counseling and treatment in an unobstructed manner; ~~that the City, through the Charleston Police Department, has an interest in protecting the safety of individuals seeking wide-ranging health care services and individuals exercising their right to protest~~; that the City has an interest in protecting access to health care services and the privacy of those obtaining health care services; that the Charleston Police Department has an interest in clear guidelines unrelated to the content of the any person's speech; and that preventing the willful obstruction of a person's access to medical counseling and treatment at a health care facility is a matter

of public concern. The City Council therefore declares that it is appropriate to enact an ordinance that prohibits a person from knowingly obstructing another person's entry to or exit from a health care facility.

(b) A person who knowingly obstructs, detains, hinders, impedes, or blocks another person's entry to or exit from a health care facility or a health care facility's dedicated parking facility is guilty of a misdemeanor offense and, upon conviction, may be confined for up to 30 days or fined up to \$500, or both confined and fined.

(c) No person shall knowingly approach another person within eight feet of such person, unless such other person consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person in the public right-of-way or sidewalk area within a radius of 100 feet from any entrance door to a health care facility. Any person who violates this subsection (c) is guilty of a misdemeanor offense and, upon conviction, may be confined for up to 30 days or fined up to \$500, or both confined and fined.

(d) For the purposes of this section, "health care facility" means any entity operating within the City that is licensed, certified, or otherwise authorized or permitted by law to administer health care services, medical treatment, or behavioral or mental health services as a health care provider in West Virginia.

(e) In addition to, and not in lieu of, the penalties set forth in this section, a person is entitled to recover civil damages and obtain injunctive relief from any person who violates the provisions of this section or incites others to violate the provisions of this section. A criminal conviction under this section is not a condition precedent to maintaining a civil action pursuant to this subsection.

(f) Any provision of the Code of the City of Charleston that is in conflict with this section is hereby repealed and the provisions of this section shall apply with respect to any such conflict.

Resolution No. 218-19

Introduced in Council:

July 15, 2019

Introduced by:

Becky Ceperley and Jeanine Faegre

Adopted by Council:

Referred to:

Ordinance and Rules

Resolution No. 218-19 - Amending and reenacting Rule 14 of the Rules of Council in order to update the process for using a previous roll call to record a vote.

Now, therefore, be it Resolved by the Council of the City of Charleston, West Virginia:

That Rule 14 of the Rules of Council be amended and reenacted to read as follows:

Rule No. 14. - Use of a previous roll call.

On any question, the roll call immediately next preceding may be used to record the vote of the city council upon ~~motion~~ a unanimous consent request by any member, provided such previous roll call was unanimous. If any member objects to the use of the previous roll call, the clerk will call the roll for the vote as if it were the first vote of the meeting.