



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 Wednesday, May 29, 2019. The meeting will begin promptly at 5:30 PM in the AV Room, 3rd Floor of City Hall.

Agenda

APPROVAL OF PREVIOUS MINUTES

1. 4-30-2019

BILLS

1. 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.

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JF/ns

MINUTES

ORDINANCE AND RULES COMMITTEE MEETING

5:45 P. M., APRIL 30, 2019

A/V CONFERENCE ROOM

Jeanine Faegre, Chairperson, called the meeting of the Charleston City Council Committee on Ordinance and Rules to order at 5:45p.m., APRIL 30, 2019, in the Audio/Visual Room in City Hall.

Committee Members Present:

Jeanine Faegre, Chair
Bobby Haas, Vice Chair
Caitlin Cook
Chuck Overstreet
Keeley Steele
Tiffany Wesley-Plear

Others:

Kevin Baker
Tony Harmon
Dan Vriendt
Mayor Goodwin
Chris Knox
Sam Minardi

1. Approval of Previous Minutes – Councilmember Faegre requested that the Minutes be changed to reflect the proper date of the previous meeting which was April 10, 2019. Councilmember Overstreet motioned to approve the amended minutes. There was no objection and the minutes were approved as amended.

2. Bill No. 7816 Committee Substitute– A BILL to amend the Code of the City of Charleston, by adding thereto new sections within Chapter 102, Article V, designated Sections 102-200, 102-201, 102-202, 102-203, 102-204, 102-205, 102-206, 102-207, 102-208, 102-209, and 102-210; and to amend and reenact sections 102-212, 102-213, and 102-215 of said code, all relating to implementing the West Virginia Small Wireless Facilities Deployment Act; detailing the purpose, application requirements, associated fees, zoning applicability, design requirements, and application process; authorizing the Planning Director and Building Commissioner to implement certain guidelines and rules; providing processing deadlines and right-of-way requirements; and updating related sections of code to conform.

Councilmember Faegre asked Kevin Baker to give the committee details about the bill. He explained that during the most recent Regular Session of Legislature, a bill was passed that created the Small Wireless Facilities Deployment Act. This will enable the City to maintain consistent design requirements and collect authorized fees. Small Wireless Facilities are equipment that attach to a fixed location and enable wireless communication with the goal of increasing the speed and coverage of networks. Kevin Baker added that ATT&T has been communicating with the City about installing such

facilities in about 30 different locations in the coming year.

Councilmember Overstreet confirmed that the bill requires that the City give companies reasonable access to the locations, with the City being able to require a permit and fee. The proposed bill sets the fees to the maximum allowed amounts. Additionally, the bill delegates aesthetic rules to the Planning Director and delegate's authority to create and process the permit to the City Engineer. Also of note, the bill requires applications to be processed within 60 days. If the company wishes to replace their devices with smaller technology after installation, they may do so without an additional permit, but they will still be required to pay the same annual fee. The bill does not require franchise agreements, but the City will be encouraging them.

The proposed Committee Substitute makes 4 minor changes to the introduced bill to conform to state law. This includes updating language regarding liability, clarifying the process for areas that have been designated solely for underground communications, adding language to ensure the Planning Director's design guidelines are consistent with state law and changing language to address the spacing requirements that are permitted under state law with respect to poles.

Councilmember Overstreet asked if anyone had seen these devices. Kevin Baker answered he has seen pictures that are wide ranging in design, but they are mostly unobtrusive. He also added these companies will still need to work out an agreement with AEP over how their electricity usage is measured. Councilmember Wesley-Plear asked if the City had a choice in regard to the visual design of the facilities. Kevin Baker explained that the bill authorizes the Planning Director to create rules that would apply to the aesthetic design. For example, in historic districts, new poles installed would need to match existing ones.

With no further discussion, Councilmember Overstreet made a motion to approve the bill. Councilmember Haas seconded. With the ayes being in the majority, Bill No. 7816 Committee Substitute was approved.

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

Bill No. 7819

Introduced in Council:

May 20, 2019

Introduced by:

Caitlin Cook

Adopted by Council:

Referred to:

Ordinances & Rules

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 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 right to protest or counsel against certain medical procedures must be balanced against another person's right to obtain medical counseling and treatment in an unobstructed manner; 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.

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

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

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

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