

MINUTES

ORDINANCE AND RULES COMMITTEE MEETING

5:00 P. M., APRIL 7, 2022

THE MEETING WAS HELD IN PERSON IN THE AV ROOM #308 IN CITY HALL.

Chad Robinson, Chairperson, called the meeting of the Charleston City Council Committee on Ordinance and Rules to order at 5:00 p.m., APRIL 7, 2022.

Committee Members Present:

Chad Robinson, Chair
Bobby Reishman, Vice Chair
Ben Adams
Becky Ceperley
Adam Knauff
Emmett Pepper
Keeley Steele

Absent:

None

Councilmembers also Present:

Shannon Snodgrass (over Zoom)
Bruce King
Jennifer Pharr
Chuck Overstreet (over Zoom)

1. Approval of Previous – Councilmember Ceperley motioned to approve the previous minutes from 2-7-2022. Councilmember Steele seconded. With the members being present having voted unanimously in the affirmative, the Chair declared the minutes approved.

Bill No. 7928 Committee Substitute – A BILL to amend and reenact Section 2-138 of 2 the Municipal Code of the City of Charleston, as amended, relating to updating 3 restrictions on certain municipal officers and employees eligibility for certain grant funds; 4 creating exceptions; and creating criminal and other penalties for violation.

Councilmember Knauff requested that the Committee first discuss the bill as introduced.

City Attorney, Kevin Baker, added that the introduced version of the bill would prohibit any Municipal Officer, employee of the Mayor's Office, Department Heads and their immediate family members or businesses from which any of those persons have a direct financial benefit from financially benefitting either directly or indirectly from funding from the City of Charleston. Those listed shall not receive nor accept any grant incentives or funding unless the receiving is based upon a low/moderate income status. The bill includes a misdemeanor offense, punishable by \$100 fine and jail time up to 30 days or both.

Councilmember Reishman said that based on that, it sounded like he would have to resign as he owns an apartment building that receives government subsidy funds. Baker added that the introduced version was exceptionally broad, which is why the Chair spoke with him about creating a Committee Substitute in order to narrow the scope of the bill.

Councilmember Knauff added that Councilmember Reishman wouldn't be affected by the grant as he stated he received funds from Veterans' affairs and Charleston Kanawha Housing Authority. Baker replied that if the City gives funding to the Housing Authority in any way, then it would apply to Councilmember Reishman, due to the "indirectly funded" language of the bill.

Councilmember Snodgrass, the bill's sponsor, added that the intent of the initial bill was to add checks and balances to avoid any impropriety or the appearance of. This would also include the extra step of getting a ruling from the Ethics Commission.

Councilmember Steele confirmed that it would be a problem if the City gave money to a non-profit that a Councilmember worked for as a budget line item. Councilmember Steele stated that has been the situation for many years, which has never been an issue before, adding that the timing is suspect. It was written broadly, and likely will unintentionally effect those that were not the target of the bill.

From the audience, Councilmember Pharr added that the bill would be very limiting to a City the size of Charleston. She disagreed that it was a good bill, and added that it was written poorly. She has received many calls from firefighters and police officers worried about their other jobs or businesses indirectly receiving funding from the City.

Councilmember Pharr asked Councilmember Knauff, a co-sponsor, what the intent of

the bill was. Councilmember Knauff replied that he did not think it would affect them unless they were the spouse of City Councilmembers, employees in the Mayor's Office or Department Heads. Councilmember Pharr confirmed with Councilmember Knauff that he did not know all of the spouses of the police officers and firefighters. Councilmember Pharr stated that the bill does not take into account every person that it would affect.

Councilmember Robinson clarified that it would not be the roll of Council to determine the outcome of any investigation as that would fall to the Charleston Police Department. Baker added that the bill creates a criminal penalty which would fall to the CPD to enforce. Councilmember Pharr added that the wording of the bill was punitive.

Councilmember Snodgrass stated that her previous comments were to the Committee Substitute.

Councilmember Robinson asked, referring to the introduced version, if a police officer that had a percentage of a small business restaurant that received a small business grant be in violation of the bill. Councilmember Knauff added he did not know about percentage-based businesses. Councilmember Robinson asked if a Councilmember or their immediate family member would be in violation if they worked for a non-profit that received funds from the City. Councilmember Snodgrass added that the intent of the bill was aimed at preventing those individuals from receiving direct, financial benefit to the individual, so the original bill would probably prohibit that. Councilmember Robinson asked if he would be in violation if his daughter takes a summer job from an entity that receives grants from the City. Councilmember Snodgrass replied that she wouldn't think so as he wouldn't personally profit from that. Councilmember Robinson asked if he would be in violation if his contracting business was hired by a recipient of a City grant. Councilmember Snodgrass said no as he would not have applied for the grant.

Speaking to the Committee Substitute, Councilmember Pepper confirmed that the Ethics Act, as part of State Law, already applies to individuals listed in the bill, so what would be different with the bill. Baker replied that he had sought an Ethics Commission opinion on whether or not a Councilmember or City employee would be eligible to receive small business grants from the City. The Ethics Commission gave an advisory opinion that a Councilmember's business may receive a grant, and cautioned that it would be a violation of the Ethics Act's prohibition against the use of their office for private gain if they were to use their position to influence the program awards or to obtain any preferential treatment, etc. that was not available to the general public. So, the Committee Substitute would go further than what the Ethics Act requires to say that these specific employees and officers, etc. would not be permitted to receive such grants from the City unless it was part of their low-income status. This would prohibit the examples given earlier. Baker added that the Committee Substitute allows for an individual to obtain an advisory opinion from the WV Ethics Commission.

Councilmember Reishman stated that Councilmembers who were also small business owners shouldn't be precluded from receiving funds like other small businesses.

Councilmember Steele asked that, since a written advisory opinion was already given concerning the subject, would it be correct to assume that the 3 Councilmembers who have put their names as sponsors to the bill do not give any weight to the opinion. Councilmember Snodgrass stated that the timing of the bill was not suspect as it was submitted in September of 2021. Additionally, the City should be proactive by having better checks and balances. Councilmember Snodgrass added that the advisory was about the water crisis, so their opinion may change. Baker added that the opinion specified that the grant funding was not general revenue, but didn't seem to be more specific than that. Councilmember Snodgrass added that the process to get those opinions were readily available.

Councilmember Ceperley asked how long it usually takes to get a written opinion. Baker replied that it was probably between four to six weeks, possibly longer.

Councilmember Steele added that there have been three rounds of these grants. The Committee Substitute for this bill came about after the third round of the grants, and she found the timing to be suspicious. She asked if there was such a concern, why did it not come up during the first round of grants or five years ago. Councilmember Knauff read the part of the Councilmember oath that stated they would not "become pecuniarily interested directly or indirectly in any contract with the City..."

Councilmember Reishman asked if his concerns would be alleviated with the Committee Substitute version. Baker replied that the language was still fairly broad (referencing line 33), and could have unintended consequences. Councilmember Reishman added that he is concerned that someone involved with the City and also had a small business could not participate in grants that were meant to encourage small businesses.

Councilmember Ceperley added that she was similarly concerned about non-profits. She added that they are already covered by the State's laws and regulations.

Councilmember Pepper asked if the oath Councilmembers take was binding. Baker replied that is an oath of office that is binding, and any violation of it could be used in legal proceedings. Not being able to use their office for private gain is in State law.

Councilmember Robinson revisited his previous scenarios now that "indirectly" had been removed. The restaurant example for a police officer would no longer be in violation. The child of a Department Head with a summer job example would no longer be in violation as long as the proceeds of a City grant did not directly pay for that person's salary. The employee of a non-profit example would no longer be in violation as long as the proceeds of a City grant did not directly pay for that person's salary. The example of the contractor would be directly benefitting, and would be in violation. Councilmembers Knauff and Snodgrass stated that they thought it was indirect. Councilmember Robinson added that if lines 30 and 31 stated instead "any grant from the City" and "administered by the City" was removed, that would alleviate Councilmember Reishman's concern.

Councilmember Adams asked if there were any unaddressed grey areas. Councilmember Robinson replied that his contractor example was a very grey area in his opinion.

Councilmember Snodgrass clarified that the bill does not pertain to all employees, but rather Department Heads. She found it disheartening that elected officials were struggling with transparency. She thought the Committee Substitute was a step in the right direction. She added that other small business were furious that one of the 75 (out of 275 that applied for a small business grant) was owned by a Councilmember.

Councilmember Steele added that hopefully there will be more small business owners on Council after the next election. She asked that as long as she got an ethics opinion before receiving such money, no one would have a problem. Councilmember Snodgrass added that they should have a checks and balance process in writing.

Councilmember Pepper motioned to amend the Committee Substitute so that page 2 line 40 would read “previously obtained an opinion from the WV Ethics Commission permitting...” removing the written advisory section from the bill.

With those being present having voted unanimously in the majority as affirmative, the Chair declared the Pepper Amendment to Bill No. 7928 Committee Substitute as approved.

Councilmember Adams asked if removing “or administered through the City” from line 31 would alleviate Councilmember Reishman’s concerns. Councilmember Ceperley replied that it probably wouldn’t, as a façade grant wouldn’t be administered through the City. Councilmember Robinson added that the amendment now addresses direct and indirect. Councilmember Knauff said that in his opinion, the building owner would be the direct recipient and the contractor would be an indirect recipient. Councilmember Ceperley asked what if the building owner and the contractor were the same person, and Councilmember Knauff replied that they should not receive the grant. Councilmember Steele added that they could get an opinion first. Councilmember Reishman added that it didn’t make any sense to discriminate like that.

With those being present having voted in the majority as affirmative, the Chair declared Bill No. 7928 Committee Substitute as Amended as approved.

Yeas: Robinson, Adams, Knauff, Pepper, Steele
Nays: Reishman, Ceperley

Councilmember Reishman motioned to adjourn the meeting. Councilmember Ceperley seconded. Meeting adjourned.