



CITY OF CHARLESTON WEST VIRGINIA



COUNCIL MEMBER – WARD 20

Chad Robinson
793 Lower Donnally Rd.
Charleston, WV 25304
304- 389-7373
chad.robinson@cityofcharleston.org

Ordinance and Rules Committee, Chair
Parks and Recreation Committee
Finance Committee
Parking Facilities Committee

A meeting of the Council Committee on Ordinance & Rules will be held on Monday, June 6, 2022 at
5:30 PM. **To be held in person**
AV ROOM #308, CITY HALL

Agenda

APPROVAL OF PREVIOUS MINUTES

1. 4-7-2022

BILLS

1. Bill No. 7960 - A BILL to amend the Municipal Code relating to creating a process for refuse related citations. A Committee Substitute will be discussed.

CR/ns

***Meetings may be recorded and broadcast via internet <https://charlestonwv.civicclerk.com>**

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.

Bill No. 7960 Committee Substitute

Introduced in Council:

May 16, 2022

Adopted by Council:

Introduced by:

**Bruce King, Chad Robinson,
Bobby Brown and Emmett Pepper**

Referred to:

Ordinance & Rules

Bill No. 7960 Committee Substitute — A BILL to amend and reenact Sections 98-1, 98-3, 98-42, and 98-101 of the Municipal Code of the City of Charleston, all relating to creating a process for refuse related citations, including appealing and challenging the citation; clarifying that complaints may still be filed directly with the municipal court; creating a specific criminal penalty for unlawfully disposing of waste water; clarifying penalties for a violation of the solid waste chapter; and creating a new penalty for setting out bulk items for pickup as part of an eviction or otherwise earlier than 6:00 p.m. on the day preceding the regular refuse collection or after 7:00 a.m. on the day of collection.

WHEREAS, in order to protect the health and welfare of the public, the refuse department collects refuse and recycling throughout the City of Charleston; and

WHEREAS, Chapter 98 of the Municipal Code provides various ordinances for the collection and disposal of refuse; and

WHEREAS, refuse collection happens on certain collection dates set forth by the Refuse Department to facilitate refuse collection in certain zones of the City on specified dates for those zones; and

WHEREAS, from time to time the provisions of Chapter 98 are violated as to when refuse is set out, when collection bins are brought back in, the types of refuse set out, and the manner in which refuse is set out, among other things; and

WHEREAS, some of the more egregious violations are from property owners, landlords, or their agents that evict individuals and leave their remaining belongings on the sidewalk for pickup well in advance of the regularly scheduled pickup; and

WHEREAS, the City desires to create a more efficient citation and fine system for violations of Chapter 98 similar to that used for parking violations to deter violations and help defray the costs of additional pickups which must occur from time to time in order to alleviate potential health, safety, and welfare hazards which may arise from such violations.

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

That Sections 98-1, 98-3, 98-42, and 98-101 of the Municipal Code of the City of Charleston are hereby amended and reenacted, all to read as follows:

CHAPTER 98. – SOLID WASTE.

ARTICLE I. – IN GENERAL.

Sec. 98-1. – Notice of violation, refuse citations, appeals, and ~~to appear before municipal court process.~~

(a) A violation of this chapter may be brought upon the issuance of a refuse citation by the director of refuse collection, the assistant director of refuse collection or the refuse collection relief foreman who shall affix a refuse citation upon the dwelling or commercial establishment that is in violation of this Code, instructing the owner or occupant of such dwelling or commercial establishment as to the penalty and manner of paying the penalty for such violation, which refuse citation shall issue in the name of the city; shall advise the alleged violator of the nature of the offense or violation of this chapter, the date, time and location of the violation, and the section or sections of this chapter violated.

(b) Issuance of a refuse citation to an alleged violator of the provisions of this chapter shall be deemed to be prima facie evidence of the refuse and collection violation indicated on the face of the refuse citation. As such, any person who is issued a refuse citation must pay the fine indicated for the violation, as set forth in section 98-42 of this Code, in full to the city collector or on the city's online payment website within ten days of issuance; provided, however, that any person who feels he or she was improperly issued such refuse citation may, within the ten days from issuance, file a dispute with the director of public works. The director of public works shall review the dispute and make an independent determination regarding the refuse citation. The director of public works shall communicate the decision to the alleged violator and notify the alleged violator that her or she may appeal the decision to the municipal court within ten days in accordance with the following:

(1) Prior to filing any appeal of the decision of the director of public works, the alleged violator shall pay the required amount of the fine in full to the city collector or on the city's online payment website as bond pending evidentiary hearing before and resolution of the case by the municipal court. The city collector must issue a receipt to the alleged violator showing the amount of the bond paid. Thereafter, in order to properly and timely appeal the decision of the director of public works regarding his or her refuse citation, the alleged violator must file a copy of the bond receipt along with his or her appeal of the decision of the director of public works with the municipal court clerk within ten days of issuance of the decision of the director of public works as set forth above. If any appeal filed in accordance with this section is not timely filed or is not accompanied with the required receipt showing payment of the required bond, the alleged violator shall be deemed to have waived his or her right to contest the refuse citation, and such appeal shall be summarily denied as untimely filed; provided,

82 however, that nothing set forth hereinabove shall prevent the municipal court judge from
83 finding upon proper showing that an alleged violator suffers from financial hardship,
84 and, as a result, waiving the requirement that the bond be posted as a prerequisite to
85 filing a timely appeal.

86
87 (2) Any appeal filed with the municipal court clerk must be in writing, on the form
88 to be provided by the municipal court clerk, and must be signed by the alleged violator
89 affirming that the contents of the appeal are true and accurate to the best of the alleged
90 violator's knowledge at that time. Such appeal must state the facts and reasons in
91 support of the alleged violator's position. Upon filing any such appeal with the municipal
92 court clerk, the alleged violator must serve a copy of the appeal and receipt showing
93 proof of bond upon the city attorney.

94
95 (3) Upon filing of an appeal of the director of public works' decision with the
96 municipal court clerk, the clerk or his or her designee shall place the case on the
97 municipal court docket, set the case for evidentiary hearing, and provide a notice of
98 hearing to the alleged violator, city attorney, and director of public works. The municipal
99 court clerk shall forward a copy of the appeal to the city attorney and the director of
100 public works. Upon receipt of the appeal, the director of public works shall cause a copy
101 of the refuse citation at issue to be forwarded to the municipal court clerk who shall file it
102 as the original complaint alleging the violation indicated therein and forward a copy to
103 the city attorney.

104
105 (4) The municipal court shall treat the refuse citation itself as the original
106 complaint before the court and shall treat it as prima facie evidence of the refuse
107 violation alleged therein. As such, the alleged violator will bear the burden of
108 overcoming the prima facie case at the evidentiary hearing. At the close of all of the
109 evidence, should the municipal judge find against the alleged violator, the bond posted
110 by the alleged violator will be applied as payment for the fine indicated for the violation;
111 however, should the court find in favor of the alleged violator, the bond shall be
112 refunded to the alleged violator. The decision of the municipal court may be appealed to
113 the circuit court of Kanawha County.

114
115 (c) In any instance in which an alleged violator does not timely pay within ten
116 days of the issuance of a refuse citation upon him or her, or ten days after the decision
117 of the director of public works, if applicable, the full amount of the fine and an additional
118 late fee equal in amount to the original fine becomes immediately due. If the alleged
119 violator properly and timely files an appeal along with the required bond, then the
120 amount of the fine shall remain at the original amount pending the decision by the
121 municipal court. Once a decision is final or an amount becomes due, the City may take
122 any lawful action necessary to collect the amount due, including but not limited to filing a
123 lien against the violator and instituting collection proceedings.

124
125 (d) In addition to any other the citation procedure prescribed by law above, for
126 any violation of any provision of this chapter within the jurisdiction of the municipal court
127 of the city, a violation may be brought before the municipal court upon the issuance of a

~~notice by the director of refuse collection, the assistant director of refuse collection or the refuse collection relief foreman, which notice shall issue by complaint of a police officer in the name of the city in the form and style required by chapter 38 of this code, which shall advise the alleged violator of the nature of the offense or violation of this chapter, the date, time and location of the violation, and the section or sections of this chapter violated. And to appear and answer before the municipal court at a time specified in the notice. Before the time specified in such notice to appear and answer, the person so cited may appear before the clerk of the municipal court or other municipal officer designated by the municipal judge and make answer to the violation set forth in the notice and pay the fine fixed by the municipal judge for such offense, or to the clerk or other officer so designated. Acceptance of the prescribed fine by the clerk or other officer shall be a complete satisfaction for the violation, and the clerk or other officer shall give the violator a receipt to that effect and pay the fine into the municipal court; provided, that any person so summoned to appear before the municipal court to answer a violation of any of the provisions of this chapter may deposit with the clerk of the municipal court or other officer designated by the municipal judge cash or other bond in an amount equal to the fine fixed by the municipal judge for such violation, conditioned for his appearance to answer such charge in court at the time specified by the clerk or other officer taking the bond. In case any person posting a bond for his appearance shall fail to appear at the time specified, such bond shall be forfeited by the court; and if such bond posted is cash, it shall be taken by the municipal court as satisfaction for the violation.~~

Sec. 98-3. – Prohibited discharges in watercourses, wells, similar places.

It shall be unlawful for any person to dispose of any waste matter of any kind, solid or liquid, in any river, creek or other watercourse or in any reservoir, lake, pond, pool, well, spring or cistern, or in any gutter or drain. Any person who violates this section in an amount of up to 100 pounds in weight or 27 cubic feet shall, upon conviction, be fined not less than \$50.00\$100.00 and not more than \$500.00\$2,500.00, or in the discretion of the court, sentenced to perform community service by cleaning up litter from any public highway, road, street, alley, or any other public park or public property within the City, as designated by the court, for not less than 8 nor more than 100 hours, or both. Any person who violates this section in an amount of between 100 pounds and 500 pounds in weight or between 27 cubic feet and 216 cubic feet shall, upon conviction, be fined not less than \$2,500.00 and not more than \$5,000.00, or in the discretion of the court, sentenced to perform community service by cleaning up litter from any public highway, road, street, alley, or any other public park or public property within the City, as designated by the court, for not less than 16 nor more than 200 hours, or both. Any person who violates this section in an amount of more than 500 pounds in weight or 216 cubic feet shall, upon conviction, be fined not less than \$2,500.00 and not more than \$25,000.00, or confined in jail for up to 30 days, or both. Each individual disposal and each day such violation is committed or permitted to continue shall may constitute a separate offense or may be combined into a single offense in order to calculate the relevant amount.

174 **ARTICLE II. – COLLECTION AND DISPOSAL.**
175 **DIVISION 1. – GENERALLY.**

176
177 **Sec. 98-42. – Violation and penalty.**
178

179 Unless a more specific penalty is stated for the specific violation, any Any person
180 violating the provisions of this article chapter or any regulation promulgated under this
181 article chapter shall be subject to a fine of \$25.00, ~~plus court costs~~ for each violation.
182 Any owner of a multifamily dwelling, four units or larger, violating this article or any
183 regulation promulgated under this article, shall be subject to a fine up to \$100.00, ~~plus~~
184 ~~court costs~~ for each violation. Any commercial establishment violating this article, or any
185 regulation promulgated under this article chapter, shall be subject to a fine of up to
186 \$100.00, ~~plus court costs~~ for each violation.
187

188 **ARTICLE II. – COLLECTION AND DISPOSAL.**
189 **DIVISION 3. – CURBSIDE COLLECTION.**
190

191 **Sec. 98-101. – Location and time for placement; disabled and infirmed residents.**
192

193 (a) All refuse, yard (green) waste, bulky waste, and recyclables shall be placed
194 for collection either at the curb or at a point not more than five feet from the curb on the
195 collection day. In areas where there are no curbs, all such waste materials shall be
196 placed not more than five feet back from the edge of the traveled road way. Except for
197 the collection and removal of the materials under subsection (b) of this section, a
198 municipal employee shall not collect or remove, at city expense, any refuse, yard
199 (green) waste, bulky waste or recyclables from the premises of any person or tenant of
200 such premises.
201

202 (b) The city manager may grant an exemption from the requirements of
203 subsection (a) of this section to residences occupied by persons with physical
204 limitations which prevent them from placing waste at the curb; however, such person
205 shall submit a written application for such exemption and certify in the application that
206 the residence is occupied by such persons. If any person making application for an
207 exemption shall submit any false, erroneous or untrue information relative to the
208 eligibility or qualifications of the applicant for such exemption, any such person
209 supplying such false, erroneous or untrue information shall be subject to a penalty as
210 provided in subsection (f) of this section.
211

212 (c) For the purpose of subsection (b) of this section, "physical limitation" shall
213 mean any illness, injury, incapacity, or other physical disability which prevents such
214 person from placing waste materials at the curb.
215

216 (d) All refuse, yard (green) waste, bulky waste and recyclables to be collected
217 shall be secured in a manner consistent with section 98-47 of this code and shall not be
218 placed for collection before 6:00 p.m. on the day preceding the collection day nor after
219 7:00 a.m. refuse is picked up on the day of collection.(e) If refuse and/or recyclables are

220 stored in standard containers, said container shall not be placed by the curb or edge of
221 the traveled road way as defined in subsection (a) of this section before 6:00 p.m. on
222 the day preceding the collection day nor after 7:00 a.m. refuse is picked up on the day
223 of collection, and must be removed from said curb or edge of the traveled road way no
224 later than 10:00 p.m. on the day of collection.

225
226 (e) A property owner, landlord, or agent of an owner or landlord may not set
227 items out for refuse collection as part of an eviction or other bulk disposal of items any
228 earlier than 6:00 p.m. on the day preceding the collection day nor after refuse is picked
229 up on the day of collection. A commercial property owner, landlord, or agent of an
230 owner or landlord that does not have an account with the city for refuse collection may
231 not place items out for refuse collection by the city and any such person with a contract
232 for collection by a private hauler may not leave refuse on the public rights of way in a
233 manner that is not secured in a dumpster designated by the private hauler.

234
235 (f) Any person violating the provisions of this section or any regulation
236 promulgated under this section shall be subject to a fine of \$25.00 plus court costs the
237 penalties contained in section 98-42 of this code for each violation and may be charged
238 in a manner consistent with section 98-1 of this code. Any owner, landlord, or agent of
239 an owner or landlord, of a multi-family rental dwelling with four or more units violating
240 subsection (e) of this section or any other regulation promulgated under this section
241 shall be subject to a fine of \$500.00 up to \$100.00 plus court costs for each violation
242 and may be charged in a manner consistent with section 98-1 of this code.
243