



# CITY OF CHARLESTON WEST VIRGINIA



## COUNCIL MEMBER – WARD 20

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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, July 8, 2024 at  
5:00 PM. **To be held in person**  
**AV ROOM #308, CITY HALL**

### Agenda

#### APPROVAL OF PREVIOUS MINUTES

1. 7-1-2024

#### BILLS

1. Bill No. 8039 - A BILL to amend the Municipal Code relating to simple possession of controlled substances and the criminal penalties; making first offense simple possession of marijuana and related substances specified in State code a non-jailable offense; clarifying the conditional discharge statutes for first offense possession charges; and updating state law references and other terminology.
2. Bill No. 8043 - A BILL to amend the Municipal Code of the City of Charleston by adding a new Section 78-374, entitled "Marijuana laws and penalties," relating to lowering the penalty for misdemeanor marijuana possession to the lowest penalty by State Law.

#### ADJOURN

CR/ns

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



# MINUTES

## ORDINANCE AND RULES COMMITTEE MEETING

6:00 P. M., JULY 1, 2024

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 6:00 p.m., July 1, 2024.

### **Committee Members Present:**

Chad Robinson, Chair  
Patrick Salango, Vice Chair  
Frank Annie  
Becky Ceperley  
Joseph Jenkins  
Sam Minardi  
Emmett Pepper

### **Absent:**

### **Other Councilmembers Present:**

Joe Solomon  
Bruce King

#### 1. Approval of Previous Minutes –

Councilmember Annie motioned to approve the previous minutes from 5-6-2024. Councilmember Minardi seconded the motion. With those being present having voted unanimously in the affirmative, the Chair declared the minutes as approved as amended.

2. Bill No. 8037 - A BILL to amend the Municipal Code relating to updating the City Center Private Outdoor Designated Area to include two special event locations; updating the City Center PODA map; explicitly vesting the City Manager with the authority to adjust the active boundary of the Private Outdoor Designated Area in order to account for special event locations; and requiring additional signage relating to the special event locations.—

City Manager Ben Mishoe added that some municipalities have had problems with special events operating within PODAS. The ABC's opinion that for special events, the entire PODA should be shut down. The Legislature has made some changes during their most recent session concerning special events operating within PODAS by creating a special event license, with the special event becoming a PODA retailer. Due to the excellent relationship with the ABC, the City was able to host the first special event PODA in the State with the Bike Bash. Live on the Levee has also been operating under this statute. Mishoe added that sometimes this is cost prohibitive. They have worked with ABC to adjust the map to where the footprint will remain the same, but there will now be two separate special event areas within the Downtown City Center Map. The areas are City Plaza at Slack Plaza and Haddad Riverfront Park. If there is a special event within those areas that do not want to participate in the PODA, the City will have the ability to temporarily shut down that portion of the PODA. During these times, large signs will be placed around the perimeter explaining the boundaries and rules.

Councilmember Pepper confirmed with Mishoe that the Regatta special event is slightly larger than the current PODA footprint. Most other events that will happen within that area will fall directly within that PODA.

Councilmember Jenkins added that practically speaking, this would come down to the types of cups that are being used, since the PODA requires a very specific cup. City Attorney Kevin Baker added that the cups are fairly expensive for vendors. Additionally, some events want their vendors to sell their products inside the event. Mishoe added that since a lot of the special events are run by non-profits, the special license fee of \$500 would be a deterrent.

Councilmember Robinson confirmed that the supply of cups donated to the City by the CVB have all been distributed, and vendors are now responsible for ordering them.

Councilmember Annie moved to approve Bill No. 8037. Councilmember Minardi seconded. With those being present having voted unanimously in the affirmative, the Chair declared Bill No. 8037.

Councilmember Annie motioned to adjourn the meeting. Meeting adjourned.

**Bill No. 8039**

**Introduced in Council:**

**July 1, 2024**

**Introduced by:**

**Frank Annie and Chad Robinson**

**Adopted by Council:**

**Referred to:**

**Ordinance & Rules**

1 **Bill No. 8039** - A BILL to amend and reenact Sections 78-371, 78-372, and 78-373 of the  
2 Municipal Code of the City of Charleston, as amended, relating to simple possession of  
3 controlled substances and the criminal penalties therefore; making first offense simple  
4 possession of marijuana and related substances specified in State code a non-jailable  
5 offense; clarifying the conditional discharge statutes for first offense possession charges;  
6 and updating state law references and other terminology.

7  
8 **Now, therefore, be it ordained by the Council of the City of Charleston:**

9  
10 That Subdivision I of Division 5 of Article V of Chapter 78, specifically, Sections 78-371,  
11 78-372, and 78-373 of the Municipal Code of the City of Charleston, as amended, are  
12 hereby amended and reenacted to read as follows:

13  
14 **DIVISION 5. - DRUGS AND RELATED OFFENSES**

15  
16 **Subdivision I. - In General**

17  
18 **Sec. 78-371. - Conditional discharge for first offense of simple possession of**  
19 **controlled substances; ~~possession of 15 grams or less of marijuana~~; expungement**  
20 **of records; ~~subsequent offenses~~.**

21  
22 (a) Whenever any person who has not previously been convicted of any offense under  
23 this ~~chapter~~ subdivision or under any statute of the United States or of any state relating  
24 to controlled substances, narcotic drugs, marijuana, or stimulant, depressant, or  
25 hallucinogenic drugs, pleads guilty to or is found guilty under this section, the court,  
26 without entering a judgment of guilt and with the consent of the accused, may defer further  
27 proceedings and place him or her on probation upon terms and conditions which may  
28 include, but is not limited to, participation in a substance abuse treatment program. Upon  
29 violation of a term or condition, the court may enter an adjudication of guilt and proceed  
30 as otherwise provided. Upon fulfillment of the terms and conditions, the court shall  
31 discharge the person and dismiss the proceedings against him or her. Discharge and  
32 dismissal under this section shall be without adjudication of guilt and is not a conviction  
33 for purposes of this section or for purposes of disqualifications or disabilities imposed by  
34 law upon conviction of a crime. The effect of the dismissal and discharge shall be to  
35 restore the person in contemplation of law to the status he or she occupied prior to arrest

36 and trial. No person as to whom a dismissal and discharge have been effected shall be  
37 thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement  
38 by reason of his or her failure to disclose or acknowledge his or her arrest or trial in  
39 response to any inquiry made of him or her for any purpose. There may be only one  
40 discharge and dismissal under this section with respect to any person.

41  
42 ~~(b) Notwithstanding any other provision of this section to the contrary, any first offense for~~  
43 ~~possession of marijuana shall be disposed of as described in section (a) above. The~~  
44 ~~definitions set forth in Article I of the West Virginia Controlled Substances Act at West~~  
45 ~~Virginia Code § §60A-1-101, et seq., and the schedules of controlled substances set forth~~  
46 ~~in Article II of the West Virginia Controlled Substances Act at West Virginia Code § 60A-~~  
47 ~~2-201, et seq., including as they may be amended from time to time, are hereby fully~~  
48 ~~incorporated and made a part of this Chapter by reference,~~

49  
50 (c) After a period of not less than six months which shall begin to run immediately upon  
51 the expiration of a term of probation imposed upon any person under this chapter, the  
52 person may apply to the court for an order to expunge from all official records all  
53 recordations recordation of his or her arrest, trial, and conviction, pursuant to this section.  
54 If the court determines after a hearing that the person during the period of his or her  
55 probation and during the period of time prior to his or her application to the court under  
56 this section has not been guilty of any serious or repeated violation of the conditions of  
57 his or her probation, it shall order the expungement.

58  
59 (d) Notwithstanding any provision of this Code to the contrary, any person prosecuted  
60 pursuant to the provisions of this article whose case is disposed of pursuant to the  
61 provisions of this section shall be liable for any court costs assessable against a person  
62 convicted of a violation of this section. Payment of such costs may be made a condition  
63 of probation.

64  
65 ~~(e) Any person convicted of a second or subsequent offense under this section may be~~  
66 ~~fined up to \$500.00 and/or sentenced to 30 days in jail. For purposes of this section an~~  
67 ~~offense is considered a second or subsequent offense if, prior to his conviction of the~~  
68 ~~offense, the offender has at any time been convicted under this Code or under any state~~  
69 ~~statute or statute of the United States or of any state relating to narcotic drugs, marijuana,~~  
70 ~~depressant, stimulant or hallucinogenic drugs.~~

71  
72 **Sec. 78-372. - Purporting to sell controlled substances.**

73  
74 (a) No person shall at any time sell any substance which that person purports to be a  
75 controlled substance, ~~as defined under schedules I through V of article II of the Uniform~~  
76 ~~Controlled Substances Act (W. Va. Code § 60A-2-201 et seq.)~~ when in actuality the  
77 substance sold contains no controlled substances.

78  
79 (b) Whoever violates the provisions of this section shall, upon conviction, be guilty of a  
80 misdemeanor and fined not more than \$100.00 or be imprisoned for a period not to  
81 exceed 30 days, or both. Subsequent violations upon conviction shall be punishable by a

82 mandatory \$100.00 fine and, in the discretion of the court, imprisonment not to exceed  
83 30 days.

84  
85 **Sec. 78-373. - Illegal possession of controlled substances; simple possession of**  
86 **marijuana.**

87  
88 *(a) Simple Possession of Controlled Substances Prohibited.* It is unlawful for any person  
89 knowingly or intentionally to possess a controlled substance, ~~specifically a drug,~~  
90 ~~substance or immediate precursor in schedules I through V as set forth in W. Va. Code~~  
91 ~~§§ 60A-2-204, 60A-2-206, 60A-2-208, 60A-2-210 and 60A-2-212 (W. Va. Code § 60A-2-~~  
92 ~~204, et seq.), unless the substance was obtained directly from or pursuant to, a valid~~  
93 ~~prescription or order of a practitioner while acting in the course of his professional~~  
94 ~~practice, or except as otherwise authorized by this Code or West Virginia law. Any Except~~  
95 ~~as provided in subsection (b) of this section for simple possession of synthetic~~  
96 ~~cannabinoids, 3,4-methylenedioxypropylamphetamine (MDPV), 4-methylmethcathinone~~  
97 ~~(mephedrone), or less than 15 grams of marijuana, any person who violates this section~~  
98 ~~is guilty of a misdemeanor and may be fined up to \$500.00 and/or sentenced to 30 days~~  
99 ~~in jail; however, notwithstanding any other provision of this division to the contrary, any~~  
100 ~~first offense for possession of 15 grams or less of marijuana shall be disposed of under~~  
101 ~~section 78-371(e).~~

102  
103 ~~(b) Conditional discharge for first offense of possession.~~

104  
105 ~~(1) Whenever any person who has not previously been convicted of any offense under~~  
106 ~~this Code or under any state statute or statute of the United States relating to narcotic~~  
107 ~~drugs, marijuana, or stimulants, depressant or hallucinogenic drugs pleads guilty to or is~~  
108 ~~found guilty of possession of a controlled substance under this section, the court, without~~  
109 ~~entering a judgment of guilt and with the consent of the accused, may defer further~~  
110 ~~proceedings and place such persons on probation upon terms and conditions. Upon~~  
111 ~~violation of a term or condition, the court may enter an adjudication of guilt and proceed~~  
112 ~~as otherwise provided. Upon fulfillment of the terms and conditions, the court shall~~  
113 ~~discharge the person and dismiss the proceedings against him. Discharge and dismissal~~  
114 ~~under this section shall be without adjudication of guilt and is not a conviction for purpose~~  
115 ~~of this section or for purpose of disqualifications or disabilities imposed by law upon~~  
116 ~~conviction of a crime, including the additional penalties imposed for second or subsequent~~  
117 ~~convictions. The effect of such dismissal and discharge shall be to restore such person~~  
118 ~~in contemplation of law to the status he occupied prior to such arrest and trial. No person~~  
119 ~~as to whom such dismissal and discharge have been effected shall be thereafter held to~~  
120 ~~be guilty of perjury, false swearing or otherwise giving a false statement by reason of his~~  
121 ~~failure to disclose or acknowledge such arrest or trial in response to any inquiry made of~~  
122 ~~him for any purpose. There may be only one discharge and dismissal under this section~~  
123 ~~with respect to any person.~~

124  
125 ~~(2) After a period of not less than six months which shall begin to run immediately upon~~  
126 ~~the expiration of a term of probation imposed upon any person under this division, such~~  
127 ~~person may apply to the court for an order to expunge from all official records all~~

128 ~~recordings of his arrest, trial and conviction pursuant to this section.~~

129

130 (b) Simple Possession of Synthetic Cannabinoids, MDPV, Mephedrone, and Less Than  
131 15 Grams of Marijuana Prohibited. It is unlawful for any person knowingly or intentionally  
132 to possess synthetic cannabinoids, 3,4-methylenedioxypropylvalerone (MDPV), 4-  
133 methylmethcathinone (mephedrone), or less than 15 grams of marijuana, unless the  
134 substance was obtained directly from, or pursuant to, a valid prescription or order of a  
135 practitioner while acting in the course of his or her professional practice, or except as  
136 otherwise authorized by West Virginia law. Any person who violates this section is guilty  
137 of a misdemeanor, and, upon a conviction: (1) for a first offense, may be fined not more  
138 than \$100.00; (2) for a second or subsequent offense, may be fined not more than  
139 \$500.00, imprisoned not more than 30 days in the regional jail, or both fined and  
140 imprisoned. Further, notwithstanding any other provision of this code to the contrary,  
141 whenever a person has not previously been convicted of any offense under this  
142 subsection or under any statute of the United States or of any state for simple possession  
143 of synthetic cannabinoids, MDPV, mephedrone, or less than 15 grams of marijuana, such  
144 initial conviction shall be disposed of under section 78-371(a).

145

**Bill No. 8043**

**Introduced in Council:**

**July 1, 2024**

**Introduced by:**

**Citizen Petition**

**Adopted by Council:**

**Referred to:**

**Ordinance and Rules Committee**

- 1 **Bill No. 8043** - A BILL to amend the Municipal Code of the City of Charleston by adding a
- 2 new Section 78-374, entitled "Marijuana laws and penalties," relating to setting penalties for
- 3 marijuana conviction at a jail sentence of ninety days suspended unconditionally and zero
- 4 dollars in fines and court costs.

## INITIATIVE PETITION

**Enacting new Section 78-374 entitled “Marijuana laws and penalties” to the City of Charleston Codified Ordinances. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed and invalid.**

To the City Clerk and the City Council of Charleston, Kanawha County, West Virginia:

We, the undersigned qualified voters of the City of Charleston, Kanawha County, West Virginia, hereby present by initiative petition, a request for city council to pass the proposed ordinance without alteration or that said ordinance be submitted for consideration of the people and electors of the City of Charleston, West Virginia for ratification or rejection, at an election in accordance with the laws of the Charleston City Charter and State of West Virginia, the following Ordinance. A full and correct copy of the title and text of said Ordinance is as follows:

### THE SENSIBLE MARIJUANA ORDINANCE

Be it ordained by the people of the City of Charleston that:

The new Charleston City Code Section 78-374 be enacted to read as follows:

#### 78-374 . MARIJUANA LAWS AND PENALTIES.

All marijuana charges inside city limits to be issued a municipal ticket to be tried at the city municipal court.

(1) “Marijuana” means all parts of the plant “Cannabis sativa L.”, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, immediate derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, immediate derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(2) It is unlawful for any person knowingly or intentionally to possess marijuana unless the marijuana was obtained legally under the West Virginia Medical Cannabis Act. Any person who violates this section is guilty of a misdemeanor and, upon conviction, such person may be confined in jail for ninety days; ninety day jail sentence shall be suspended unconditionally, or fined not more than zero dollars, or both.

(3) All court costs shall be suspended unconditionally for violations of sections herein.

**RECEIVED**

**JUN 28 2024**

**OFFICE OF CITY CLERK**

(4) Severability. The sections of this amendment are severable. The invalidity of a section shall not affect the validity of the remaining sections. Any section ruled invalid by a court shall be revised to the minimum extent necessary to maintain validity and enforceability and kept in effect if a revision can be made.

The form of the ballot by which this ordinance shall be submitted to the electors of the City of Charleston shall be substantially as follows:

“Shall the City of Charleston adopt the sensible marihuana ordinance, which lowers the penalty for misdemeanor marijuana possession to the lowest penalty allowed by State Law. Submitted for ratification or rejection.”

	for said ordinance
	against said ordinance

Each of the undersigned qualified voters hereby request that said ordinance hereinbefore set forth be passed or submitted to the electors of the City of Charleston, West Virginia for ratification or rejection, and the proper notices be published, all as required by law and the provisions of the Charleston City Charter and the State of West Virginia: