

MINUTES

ORDINANCE AND RULES COMMITTEE MEETING

5:00 P. M., JULY 8, 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 5:00 p.m., July 8, 2024.

Committee Members Present:

Chad Robinson, Chair
Frank Annie
Joseph Jenkins
Emmett Pepper

Absent:

Patrick Salango, Vice Chair
Becky Ceperley (attending Planning, Streets and Traffic meeting)
Sam Minardi

Other Councilmembers Present:

Beth Kerns

1. Approval of Previous Minutes –

Councilmember Annie motioned to approve the previous minutes from 7-1-2024. Councilmember Pepper 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. 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.

AND

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.

City Attorney Kevin Baker explained that marijuana is a controlled substance under West Virginia law that can be penalized by a fine of up to \$1,000 and jail time of not less than 90 days and no more than 6 months. Bill No. 8039 cleans up City Code to match the State's language. Under current City Code, the first offense is up to 30 days and a \$500 fine, and uses the process of discharging and expunging for first offense with marijuana. The bill also changes the first offense to up to \$100 fine with no jail time. For subsequent offenses, the bill retains the current Code with higher fines and jail time. It also incorporates the definitions and schedules from State Code.

Baker added that the Petition would create a new Section in City Code that defines marijuana per State Code, and states that upon a misdemeanor possession conviction, the jail time of 90 days is suspended unconditionally with a fine of \$0 and no court costs. Baker added that he has a few legal concerns about the petition. State Law only authorizes municipalities to punish by confinement up to 30 days in jail. Although suspended unconditionally, the petition states 90 days. It requires an unconditional suspension of court costs, the collection of which is required by State Law. He was not sure how that could be carried out if the ordinance was enacted. Additionally, the language of the petition calls for language on the ballot is not a fair reflection as to what is stated in the bill. Baker added that under the petition, a defendant would no longer have the ability to appeal their case.

Councilmember Pepper asked if other cities had done something similar to what the petition proposes. Baker replied that he has been found any statutes that specifically require that a sentence be suspended unconditionally, but Ohio sometimes does it in practice.

Councilmember Pepper asked if the ballot language could be corrected. Baker replied that is unclear according to the Charter, however it seemed reasonable that it would be within the Clerk's authority to submit it properly for the ballot. It might also be possible that Council could vote on the proper wording for the ballot.

Councilmember Pepper summarized the options for the Petition as being they could

pass it, or not pass it, at which point it would go on the General ballot. If it would be approved via ballot, Council would not be able to amend it. Baker added that the Petition was referred to the Committee for discussion. Councilmember Pepper confirmed that if the Petition was passed by Council, it could be amended.

Councilmember Jenkins asked if this portion of the Charter was still valid after the passage of the State's municipal code. Baker replied that since this process was last used in the 1950s, he did not see anything that would invalidate it. He did find a section of State Code that authorizes ballot initiatives by Charter that lists a requirement of signatures equal to 10% of registered voters.

Referring to Bill No. 8039, Councilmember Jenkins confirmed that Part A referred to any controlled substance other than marijuana and synthetic cannabinoids. He added that he thought there was a drafting issue causing confusion that made it seem like there was no penalty for all controlled substances. Baker agreed.

Councilmember Annie confirmed that they could reduce fines and jail time, and could keep the system in place that would give the Municipal Judge more options. He asked if this would extend to synthetic marijuana. Baker confirmed that it would as drafted.

Councilmember Pepper asked if they could pass a bill that was in the spirit of the Petitioner bill. Baker replied that he believed that the Petitioner bill could be appropriately withdrawn with a letter from Corey Zinn, as he was the person who submitted the bill and signatures.

Councilmember Robinson added that it seemed like the most direct process would be if the Petition bill were withdrawn, and Bill No. 8039 were amended. Councilmember Jenkins added that the best option would be to advise Council to pass the Petition bill, which can be addressed with the other bill.

Councilmember Pepper suggested that if they passed Bill No. 8039 in the spirit of the Petition bill, that might satisfy the petitioner to withdraw their bill.

Councilmember Pepper confirmed with Baker that if the City did not follow the required 407 Section, then someone could be treated differently in Circuit Court than Municipal Court. Regarding removing the 15 grams limitation, Councilmember Jenkins asked if that would also apply to someone with an unreasonably large amount of marijuana. Baker replied that the totality of circumstances is taken into account to prove possession with intent versus simple possession.

Councilmember Pepper confirmed that the bill states that a person can be placed on probation rather than incarceration if they do not have a previous conviction. Baker replied that was the diversion program, which is currently used as a one-time situation. Regarding the 2nd Pepper Amendment, Councilmember Jenkins expressed concerns that it would open it up too far. He added that the language also states "shall." He suggested a time frame. Councilmember Annie suggested 1 year. Baker clarified with

Councilmember Pepper that the intent of the amendment was to allow use of the program multiple times for the use of marijuana and synthetic cannabinoids only. Councilmember Jenkins suggested that they instead change the language to number of times a deferment can be used.

Regarding the 3rd Pepper amendment, Councilmember Jenkins confirmed that MDVP etc. was also referred to as 'bath salts.' Councilmember Jenkins added that he did not think possible jail time should be removed for offenses involving more harmful substances such as bath salts. Councilmember Robinson agreed.

Regarding the Annie Amendment, Councilmember Jenkins thought it was fine to remove fines for the first offense, but not for subsequent offenses. Councilmember Robinson agreed.

Bill No. 8039:

Councilmember Jenkins motioned to amend Bill No. 8039 to contain the technical changes as previously stated. With those being present having voted unanimously in the affirmative, the Chair declared the amendment as passed.

Councilmember Pepper motioned to amend Bill No. 8039 to remove the 15 grams limitation. With those being present having voted unanimously in the affirmative, the Chair declared the amendment as passed.

Councilmember Pepper motioned to amend Bill No. 8039 to allow a person to qualify for the diversion program regardless of previous convictions. Councilmember Pepper reformed his amendment to allow for a 12-month period deferment between convictions as previously mentioned. With those being present having voted in the majority as affirmative, with a Nay from Jenkins, the Chair declared the amendment as passed.

Councilmember Pepper motioned to amend Bill No. 8039 to remove all instances that listed incarceration on page 4. Councilmember Pepper reformed his amendment to only include marijuana and synthetic cannabinoids. With those being present having voted unanimously in the affirmative, the Chair declared the amendment as passed.

Councilmember Annie motioned to amend Bill No. 8039 to change the language to no fines but include court costs for all marijuana and With those being present having voted unanimously in the affirmative, the Chair declared the amendment as passed. convictions. Councilmember Annie reformed his amendment so that the language referred to the first offense. With those being present having voted unanimously in the affirmative, the Chair declared the amendment as passed.

Councilmember Annie motioned to lay over Bill No. 8039 until the next meeting on July 15, 2024. With those being present having voted unanimously in the affirmative, the Chair declared the motion to lay over Bill No. 8039 as passed.

Councilmember Jenkins motioned to lay over Bill No. 8043 until the next meeting on July 15, 2024. With those being present having voted unanimously in the affirmative, the Chair declared the motion to lay over Bill No. 8043 as passed.

Councilmember Annie motioned to adjourn the meeting. Meeting adjourned.