



# 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 Thursday, August 15, 2024 at 5:00 PM. **To be held in person**  
**AV ROOM #308, CITY HALL**

**\*Join via Zoom:**

<https://us02web.zoom.us/j/82879900081?pwd=vkbcagEGDzW7aDpelbChz9oEnIPLOq.1>

**Passcode: 130539**

**\*Join via Telephone: (312) 626-6799 or (929) 436-2866**

**Webinar ID: 828 7990 0081**

### Agenda

#### APPROVAL OF PREVIOUS MINUTES

1. 7-15-2024

#### BILLS

1. Bill No. 8039 Committee Substitute - A BILL to amend the Municipal Code relating to updating, clarifying, and reforming the controlled substances offenses in the Municipal Code, incorporating the state code definitions and schedules of controlled substances, reducing the penalties for simple possession of certain controlled substances; making simple possession of marijuana a non-jailable offense; clarifying the conditional discharge statutes for simple possession charges; and expanding the possibilities for discharge of controlled substance possession charges.

#### ADJOURN

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



# MINUTES

## ORDINANCE AND RULES COMMITTEE MEETING

5:30 P. M., JULY 15, 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 5:30 p.m., July 15, 2024.

### **Committee Members Present:**

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

### **Absent:**

Sam Minardi

### **Other Councilmembers Present:**

Beth Kerns  
Joe Solomon  
Bruce King  
Chuck Overstreet  
Mary Beth Hoover  
Shawn Taylor  
Caitlin Cook

#### 1. Approval of Previous Minutes –

Councilmember Ceperley motioned to approve the previous minutes from 7-8-2024. Councilmember Annie 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 Committee Substitute - A BILL to amend the Municipal Code by adding a new section related to controlled substances offenses in Municipal Code.

City Attorney Kevin Baker explained that Section 371 now incorporates new language that incorporates the definition and schedules from State Code. Section 373 is broken into three subdivisions. It sets a first offense for simple possession of marijuana and synthetic cannabinoids to a fine of \$0 and no jail time. Second offense is set at up to \$500 fine and no jail time. They both require the diversion program to be used. The reference of 15 grams of marijuana has been removed.

Councilmember Jenkins pointed out that “prohibited” should be added to Section 78-373 b for consistency. Baker agreed.

Councilmember Ceperley received clarification from Baker that the bill would not legalize marijuana. It would reduce the penalty by removing jail time in Municipal Court. Councilmember Ceperley asked what the reason for the bill was. Councilmember Annie replied that it reflects the trends throughout the country. The person would still have to go to court and pay court fees. Councilmember Robinson added that the bill is a modernization of City Code.

Councilmember Robinson confirmed that the 15 grams was removed in the definition per Councilmember Pepper’s amendment during the previous meeting. Police Chief Dempsey added that the removal of the “15 grams” would change police operations as to how certain crimes were charged.

Councilmember Jenkins added that nation trends are moving to where resources are better spent on enforcing harder drugs, violent crimes, etc. Removing jail time also removes the cost to the city. Councilmember Jenkins asked if it could impact the police’s ability to leverage a simple possession charge. Chief Dempsey replied that he thought it would to a certain extent. He cautioned the Committee to consider all factors when making their decision.

Councilmember Robinson confirmed with Baker that the Municipal Court has given jail time to anyone with simple possession charge of marijuana for some time.

Councilmember Pepper confirmed with Baker that the deferment plan is an option for other types of possession, and there are other ways to get individuals treatment. Attorney David Potters added that the Public Defender’s Office pays for a panel counsel to represent individuals that qualify for a free lawyer from their budget.

From the audience, Councilmember Taylor asked if the Municipal Judge had been consulted. Councilmember Robinson replied that the Attorney’s Office did discuss it with them generally. Councilmember Taylor added that there are court costs imposed and required by State Code. He added that a non-jailable offense removes the right for an individual to apply for free counsel.

Councilmember Pepper motioned to approve Bill No. 8039 Committee Substitute with the previously mentioned technical clean up. Councilmember Annie seconded. With those being present having voted in the majority in the affirmative, with one recognized Nay from Ceperley, the Chair declared Bill No. 8039 Committee Substitute as approved.

3. 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.

The chair removed the item from the agenda.

4. Bill No. 8038 - A BILL to amend the Municipal Code relating to expanding the urban deer hunt to allow for urban bear and coyote hunting; authorizing the use of air rifles of .22 caliber or larger to hunt coyotes as part of the urban hunt; and expanding the hours to allow for hunting of coyotes at night on private property.

Baker explained that the bill expands the current Urban Deer Hunt to include the possible hunting of coyote and bear. The time period remains the same, and requirements remain the same, with the exception that a hunter may use an air rifle to hunt coyotes in accordance with County and State Code.

Councilmember Ceperley confirmed with Baker that bears can only be hunted with bow and arrow or compound bow.

Councilmember Robinson confirmed that the bag limit for coyote was unlimited and two per year for bear.

Councilmember Pepper asked what problem the bill would solve. Councilmember Robinson replied that coyotes are dangerous to humans and other animals (pets), and are in several neighborhoods. There have also been multiple sightings of bears every year in certain neighborhoods, in trash, on cars and in backyards and patios. Councilmember Annie added that the initial reason for the bill was that cats were being killed by coyotes in his neighborhood.

Councilmember Pepper asked if any other municipalities in the State have similarly authorized hunting. Baker replied that was not part of his research for the bill. Councilmember Pepper added that he would want to know if there had been any

instances of dogs being mistaken for coyotes, are coyotes more aggressive if they have been shot but not killed, etc. He added that he has not heard from constituents regarding bears or coyotes. Part of the problem with these two animals is that they are getting food near houses, and the bill does not address that.

From the audience, Councilmember Solomon advocated that a study be first conducted as to population distribution, locations of incidents, the role such animals play in the environment, etc.

Baker added that the bill is silent on whether dogs be allowed to hunt bears. State Code allows it. It would be reasonable to assume City Code does as well unless otherwise stated.

Councilmember Annie motioned to approve Bill No. 8038 Councilmember Ceperley seconded. With those being present having voted in the majority in the affirmative, with one recognized Nay from Ceperley, the Chair declared Bill No. 8038 as approved.

5. Bill No. 8040 Committee Substitute - A BILL to amend the Municipal Code relating to dogs running at large, and the penalties and impoundment therefore.

Baker explained that the bill contains some clean up language that essentially requires a dog to be on a lease unless it is on the owner's property. It would provide more discretion to the Court as to penalties and fines within the set range. The Committee Substitute clarifies the definition of an aggressive dog.

Councilmember Annie added that the bill is in response to previous incidents of loose dogs in his Ward.

Councilmember Jenkins pointed out that the fines for first offenses for loose and aggressive dogs were the same. He asked what would happen to an aggressive dog that was not voluntarily surrendered. Baker replied that a dog deemed aggressive by the Municipal Court would be required to be insured, microchipped and wear a muzzle while leashed in public. State Court has the process to euthanize the dog.

Councilmember Jenkins motioned to amend the fine for aggressive dogs for first offense to be \$100 and second and subsequent offenses to be \$100 no more than \$500.

From the audience, Councilmember Taylor shared his experience with these types of cases as a former Municipal Judge, and added that they often have heightened emotions.

From the audience, Councilmember Steelhammer confirmed with the Committee that electronic leashes are mainly used for training hunting dogs. Councilmember Ceperley

confirmed that her friend uses one for their very large dog. Councilmember Ceperley asked if stray/feral cats were protected from aggressive dogs in the bill. Potters replied that it did not seem that they would not be included.

Councilmember Jenkins motioned to amend the bill by amending Section 10-162(b) to change to offenses for an aggressive dog to the amounts previously discussed. With those being present having voted unanimously in the affirmative, the Chair declared the amendment as passed.

Councilmember Annie motioned to approve Bill No. 8040 Committee Substitute as Amended. Councilmember Jenkins seconded. With those being present having voted unanimously in the affirmative, the Chair declared Bill No. 8040 Committee Substitute as Amended as approved.

Councilmember Annie motioned to adjourn the meeting. Meeting adjourned.

**Bill No. 8039 Committee Substitute (Revised 8/6/24)**

**Introduced in Council:**

**Adopted by Council:**

**July 1, 2024**

**Introduced by:**

**Referred to:**

**Frank Annie and Chad Robinson**

**Ordinance & Rules**

1 **Bill No. 8039 Committee Substitute** - A BILL to amend and reenact Sections 78-371,  
2 78-372, and 78-373 of the Municipal Code of the City of Charleston, as amended, and to  
3 amend said Code by adding thereto a new section, designated Section 78-374, all relating  
4 updating, clarifying, and reforming the controlled substances offenses in Municipal Code,  
5 to incorporating the state code definitions and schedules of controlled substances,  
6 reducing the penalties for simple possession of certain controlled substances and the  
7 criminal penalties therefore; making first offense simple possession of marijuana and  
8 related substances specified in State code a non-jailable offense; clarifying the conditional  
9 discharge statutes for first offense simple possession charges; and expanding the  
10 possibilities for discharge of controlled substance possession charges; and updating state  
11 law references and other terminology.

12  
13 **Now, therefore, be it ordained by the Council of the City of Charleston:**

14  
15 That Subdivision I of Division 5 of Article V of Chapter 78, specifically, Sections 78-371,  
16 78-372, and 78-373 of the Municipal Code of the City of Charleston, as amended, are  
17 hereby amended and reenacted and that a new section, designated Section 78-374, is  
18 added thereto, all to read as follows:

19  
20 **DIVISION 5. - DRUGS AND RELATED OFFENSES**

21  
22 **Subdivision I. - In General**

23  
24 **Sec. 78-371. -- Definitions and Schedules Incorporated.** ~~Conditional discharge for~~  
25 ~~first offense of simple possession of controlled substances; possession of 15~~  
26 ~~grams or less of marijuana; expungement of records; subsequent offenses.~~

27  
28 ~~(a) Whenever any person who has not previously been convicted of any offense under~~  
29 ~~this chapter subdivision or under any statute of the United States or of any state relating~~  
30 ~~to controlled substances, narcotic drugs, marijuana, or stimulant, depressant, or~~  
31 ~~hallucinogenic drugs, pleads guilty to or is found guilty under this section, the court,~~  
32 ~~without entering a judgment of guilt and with the consent of the accused, may defer further~~  
33 ~~proceedings and place him or her on probation upon terms and conditions which may~~  
34 ~~include, but is not limited to, participation in a substance abuse treatment program. Upon~~  
35 ~~violation of a term or condition, the court may enter an adjudication of guilt and proceed~~

36 ~~as otherwise provided. Upon fulfillment of the terms and conditions, the court shall~~  
37 ~~discharge the person and dismiss the proceedings against him or her. Discharge and~~  
38 ~~dismissal under this section shall be without adjudication of guilt and is not a conviction~~  
39 ~~for purposes of this section or for purposes of disqualifications or disabilities imposed by~~  
40 ~~law upon conviction of a crime. The effect of the dismissal and discharge shall be to~~  
41 ~~restore the person in contemplation of law to the status he or she occupied prior to arrest~~  
42 ~~and trial. No person as to whom a dismissal and discharge have been effected shall be~~  
43 ~~thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement~~  
44 ~~by reason of his or her failure to disclose or acknowledge his or her arrest or trial in~~  
45 ~~response to any inquiry made of him or her for any purpose. There may be only one~~  
46 ~~discharge and dismissal under this section with respect to any person.~~

47  
48 ~~(b) Notwithstanding any other provision of this section to the contrary, any first offense for~~  
49 ~~possession of marijuana shall be disposed of as described in section (a) above. The~~  
50 ~~definitions set forth in Article I of the West Virginia Controlled Substances Act at West~~  
51 ~~Virginia Code § §60A-1-101, et seq., and the schedules of controlled substances set forth~~  
52 ~~in Article II of the West Virginia Controlled Substances Act at West Virginia Code § 60A-~~  
53 ~~2-201, et seq., including as they may be amended from time to time, are hereby fully~~  
54 ~~incorporated and made a part of this Chapter by reference.~~

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

64  
65 ~~(d) Notwithstanding any provision of this Code to the contrary, any person prosecuted~~  
66 ~~pursuant to the provisions of this article whose case is disposed of pursuant to the~~  
67 ~~provisions of this section shall be liable for any court costs assessable against a person~~  
68 ~~convicted of a violation of this section. Payment of such costs may be made a condition~~  
69 ~~of probation.~~

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

77  
78 **Sec. 78-372. - Purporting to sell controlled substances.**

79  
80 (a) No person shall at any time sell any substance which that person purports to be a  
81 controlled substance, as defined under schedules I through V of article II of the Uniform

82 ~~Controlled Substances Act (W. Va. Code § 60A-2-201 et seq.) when in actuality the~~  
83 ~~substance sold contains no controlled substances.~~

84  
85 (b) Whoever violates the provisions of this section shall, upon conviction, be guilty of a  
86 misdemeanor and fined not more than \$100.00 or be imprisoned for a period not to  
87 exceed 30 days, or both. Subsequent violations upon conviction shall be punishable by a  
88 mandatory \$100.00 fine and, in the discretion of the court, imprisonment not to exceed  
89 30 days.

90  
91 **Sec. 78-373. - ~~Illegal Simple possession of marijuana, synthetic cannabinoids, and~~**  
92 **~~other controlled substances; simple possession of marijuana.~~**

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

108  
109 (b) Conditional discharge for first offense of possession.

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

128 him for any purpose. There may be only one discharge and dismissal under this section  
129 with respect to any person.

130  
131 ~~(2) After a period of not less than six months which shall begin to run immediately upon~~  
132 ~~the expiration of a term of probation imposed upon any person under this division, such~~  
133 ~~person may apply to the court for an order to expunge from all official records all~~  
134 ~~recordings of his arrest, trial and conviction pursuant to this section.~~

135  
136 ~~(b)(a) Simple Possession of Synthetic Cannabinoids, MDPV, Mephedrone, and Less~~  
137 ~~Than 15 Grams of Marijuana Prohibited.~~ It is unlawful for any person knowingly or  
138 ~~intentionally to possess synthetic cannabinoids, 3,4-methylenedioxypropylone~~  
139 ~~(MDPV), 4-methylmethcathinone (mephedrone), or less than 15 grams of marijuana,~~  
140 ~~unless the substance was obtained directly from, or pursuant to, a valid prescription or~~  
141 ~~order of a practitioner while acting in the course of his or her professional practice, or~~  
142 ~~except as otherwise authorized by West Virginia law. Any person who violates this section~~  
143 ~~subsection is guilty of a misdemeanor, and, upon a conviction: (1) for a first offense, may~~  
144 ~~be fined not more than \$100.00; or (2) for a second offense, may be fined not more~~  
145 ~~than \$250.00, or (3) for a third or subsequent offense, may be fined not more than~~  
146 ~~\$500.00, imprisoned not more than 30 days in the regional jail, or both fined and~~  
147 ~~imprisoned.~~ Further, notwithstanding any other provision of this code to the contrary,  
148 ~~whenever a person has not previously been convicted within the previous one year of any~~  
149 ~~offense under this subsection-subdivision or under any statute of the United States or of~~  
150 ~~any state for relating to controlled substances, narcotic drugs, marijuana, or stimulant,~~  
151 ~~depressant, or hallucinogenic drugssimple possession of synthetic cannabinoids, MDPV,~~  
152 ~~mephedrone, or less than 15 grams of marijuana,~~ such initial conviction shall be disposed  
153 ~~of under section 78-371(a)78-374.~~

154  
155 ~~(b) Simple Possession of Synthetic Cannabinoids, MDPV, and Mephedrone Prohibited.~~  
156 ~~It is unlawful for any person knowingly or intentionally to possess synthetic cannabinoids,~~  
157 ~~3,4-methylenedioxypropylone (MDPV) or 4-methylmethcathinone (mephedrone),~~  
158 ~~unless the substance was obtained directly from, or pursuant to, a valid prescription or~~  
159 ~~order of a practitioner while acting in the course of his or her professional practice, or~~  
160 ~~except as otherwise authorized by West Virginia law. Any person who violates this~~  
161 ~~subsection is guilty of a misdemeanor, and, upon a conviction: (1) for a first offense, may~~  
162 ~~be fined not more than \$100.00; or (2) for a second offense or subsequent offense, may~~  
163 ~~be fined not more than \$500.00, imprisoned not more than 30 days in the regional jail, or~~  
164 ~~both fined and imprisoned. Further, notwithstanding any other provision of this code to~~  
165 ~~the contrary, whenever a person has not previously been convicted of any offense under~~  
166 ~~this subdivision or under any statute of the United States or of any state relating to~~  
167 ~~controlled substances, narcotic drugs, marijuana, or stimulant, depressant, or~~  
168 ~~hallucinogenic drugs, such initial conviction shall be disposed of under section 78-374.~~

169  
170 ~~(c) Simple Possession of Controlled Substances Prohibited.~~ It is unlawful for any person  
171 ~~knowingly or intentionally to possess any other controlled substance not specified in~~  
172 ~~subsection (a) or (b) of this section, unless the substance was obtained directly from or~~  
173 ~~pursuant to, a valid prescription or order of a practitioner while acting in the course of his~~

174 professional practice, or except as otherwise authorized by this Code or West Virginia  
175 law. Any person who violates this subsection is guilty of a misdemeanor and may be fined  
176 up to \$500.00 or confined up to 30 days in jail, or both fined and confined.  
177

178 **Sec. 78-374. – Conditional discharge for simple possession of controlled**  
179 **substances; expungement of records.**  
180

181 (a) Except as otherwise provided in this Code, whenever any person who has not been  
182 convicted of any offense under this subdivision or under any statute of the United States  
183 or of any state relating to controlled substances, narcotic drugs, marijuana, or stimulant,  
184 depressant, or hallucinogenic drugs, pleads guilty to or is found guilty under section 78-  
185 373, the court, without entering a judgment of guilt and with the consent of the accused,  
186 may defer further proceedings and place him or her on probation upon terms and  
187 conditions which may include, but is not limited to, participation in a substance abuse  
188 treatment program. Upon violation of a term or condition, the court may enter an  
189 adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and  
190 conditions, the court shall discharge the person and dismiss the proceedings against him  
191 or her. Discharge and dismissal under this section shall be without adjudication of guilt  
192 and is not a conviction for purposes of this section or for purposes of disqualifications or  
193 disabilities imposed by law upon conviction of a crime. The effect of the dismissal and  
194 discharge shall be to restore the person in contemplation of law to the status he or she  
195 occupied prior to arrest and trial. No person as to whom a dismissal and discharge have  
196 been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise  
197 giving a false statement by reason of his or her failure to disclose or acknowledge his or  
198 her arrest or trial in response to any inquiry made of him or her for any purpose. There  
199 may be only one discharge and dismissal under this section with respect to any person:  
200 Provided, That this limitation does not apply to anyone charged under Section 78-373(a)  
201 for possession of marijuana.  
202

203 (b) After a period of not less than six months which shall begin to run immediately upon  
204 the expiration of a term of probation imposed upon any person pursuant to this section,  
205 the person may apply to the court for an order to expunge from all official records all  
206 recordation of his or her arrest, trial, and conviction. If the court determines after a hearing  
207 that the person during the period of his or her probation and during the period of time prior  
208 to his or her application to the court under this section has not been guilty of any serious  
209 or repeated violation of the conditions of his or her probation, it shall order the  
210 expungement.  
211

212 (c) Notwithstanding any provision of this Code to the contrary, any person prosecuted  
213 pursuant to the provisions of this subdivision whose case is disposed of pursuant to the  
214 provisions of this section shall be liable for any court costs assessable against a person  
215 convicted of a violation of this subdivision. Payment of such costs may be made a  
216 condition of probation.  
217

**Bill No. 8039 Committee Substitute (Revised 8/6/24)**

**Introduced in Council:**

**Adopted by Council:**

**July 1, 2024**

**Introduced by:**

**Referred to:**

**Frank Annie and Chad Robinson**

**Ordinance & Rules**

1 **Bill No. 8039 Committee Substitute** - A BILL to amend and reenact Sections 78-371,  
2 78-372, and 78-373 of the Municipal Code of the City of Charleston, as amended, and to  
3 amend said Code by adding thereto a new section, designated Section 78-374, all relating  
4 updating, clarifying, and reforming the controlled substances offenses in Municipal Code,  
5 incorporating the state code definitions and schedules of controlled substances, reducing  
6 the penalties for simple possession of certain controlled substances; making simple  
7 possession of marijuana a non-jailable offense; clarifying the conditional discharge  
8 statutes for simple possession charges; and expanding the possibilities for discharge of  
9 controlled substance possession charges.

10  
11 **Now, therefore, be it ordained by the Council of the City of Charleston:**

12  
13 That Subdivision I of Division 5 of Article V of Chapter 78, specifically, Sections 78-371,  
14 78-372, and 78-373 of the Municipal Code of the City of Charleston, as amended, are  
15 hereby amended and reenacted and that a new section, designated Section 78-374, is  
16 added thereto, all to read as follows:

17  
18 **DIVISION 5. - DRUGS AND RELATED OFFENSES**

19  
20 **Subdivision I. - In General**

21  
22 **Sec. 78-371. – Definitions and Schedules Incorporated.**

23  
24 The definitions set forth in Article I of the West Virginia Controlled Substances Act at West  
25 Virginia Code § §60A-1-101, et seq., and the schedules of controlled substances set forth  
26 in Article II of the West Virginia Controlled Substances Act at West Virginia Code § 60A-  
27 2-201, et seq., including as they may be amended from time to time, are hereby fully  
28 incorporated and made a part of this Chapter by reference.

29  
30 **Sec. 78-372. - Purporting to sell controlled substances.**

31  
32 (a) No person shall at any time sell any substance which that person purports to be a  
33 controlled substance when in actuality the substance sold contains no controlled  
34 substances.

36 (b) Whoever violates the provisions of this section shall, upon conviction, be guilty of a  
37 misdemeanor and fined not more than \$100.00 or be imprisoned for a period not to  
38 exceed 30 days, or both. Subsequent violations upon conviction shall be punishable by a  
39 mandatory \$100.00 fine and, in the discretion of the court, imprisonment not to exceed  
40 30 days.

41  
42 **Sec. 78-373. - Simple possession of marijuana, synthetic cannabinoids, and other**  
43 **controlled substances.**

44  
45 (a) *Simple Possession of Less Than 15 Grams of Marijuana Prohibited.* It is unlawful for  
46 any person knowingly or intentionally to possess less than 15 grams of marijuana, unless  
47 the substance was obtained directly from, or pursuant to, a valid prescription or order of  
48 a practitioner while acting in the course of his or her professional practice, or except as  
49 otherwise authorized by West Virginia law. Any person who violates this subsection is  
50 guilty of a misdemeanor, and, upon a conviction: (1) for a first offense, may be fined not  
51 more than \$0.00; or (2) for a second offense, may be fined not more than \$250.00, or (3)  
52 for a third or subsequent offense, may be fined not more than \$500.00. Further,  
53 notwithstanding any other provision of this code to the contrary, whenever a person has  
54 not been convicted within the previous one year of any offense under this subdivision or  
55 under any statute of the United States or of any state relating to controlled substances,  
56 narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, such  
57 conviction shall be disposed of under section 78-374.

58  
59 (b) *Simple Possession of Synthetic Cannabinoids, MDPV, and Mephedrone Prohibited.*  
60 It is unlawful for any person knowingly or intentionally to possess synthetic cannabinoids,  
61 3,4-methylenedioxypropylvalerone (MDPV) or 4-methylmethcathinone (mephedrone),  
62 unless the substance was obtained directly from, or pursuant to, a valid prescription or  
63 order of a practitioner while acting in the course of his or her professional practice, or  
64 except as otherwise authorized by West Virginia law. Any person who violates this  
65 subsection is guilty of a misdemeanor, and, upon a conviction: (1) for a first offense, may  
66 be fined not more than \$100.00; or (2) for a second or subsequent offense, may be fined  
67 not more than \$500.00, imprisoned not more than 30 days in the regional jail, or both  
68 fined and imprisoned. Further, notwithstanding any other provision of this code to the  
69 contrary, whenever a person has not previously been convicted of any offense under this  
70 subdivision or under any statute of the United States or of any state relating to controlled  
71 substances, narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs,  
72 such initial conviction shall be disposed of under section 78-374.

73  
74 (c) *Simple Possession of Controlled Substances Prohibited.* It is unlawful for any person  
75 knowingly or intentionally to possess any other controlled substance not specified in  
76 subsection (a) or (b) of this section, unless the substance was obtained directly from or  
77 pursuant to, a valid prescription or order of a practitioner while acting in the course of his  
78 professional practice, or except as otherwise authorized by this Code or West Virginia  
79 law. Any person who violates this subsection is guilty of a misdemeanor and may be fined  
80 up to \$500.00 or confined up to 30 days in jail, or both fined and confined.

81

82 **Sec. 78-374. – Conditional discharge for simple possession of controlled**  
83 **substances; expungement of records.**

84  
85 (a) Except as otherwise provided in this Code, whenever any person who has not been  
86 convicted of any offense under this subdivision or under any statute of the United States  
87 or of any state relating to controlled substances, narcotic drugs, marijuana, or stimulant,  
88 depressant, or hallucinogenic drugs, pleads guilty to or is found guilty under section 78-  
89 373, the court, without entering a judgment of guilt and with the consent of the accused,  
90 may defer further proceedings and place him or her on probation upon terms and  
91 conditions which may include, but is not limited to, participation in a substance abuse  
92 treatment program. Upon violation of a term or condition, the court may enter an  
93 adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and  
94 conditions, the court shall discharge the person and dismiss the proceedings against him  
95 or her. Discharge and dismissal under this section shall be without adjudication of guilt  
96 and is not a conviction for purposes of this section or for purposes of disqualifications or  
97 disabilities imposed by law upon conviction of a crime. The effect of the dismissal and  
98 discharge shall be to restore the person in contemplation of law to the status he or she  
99 occupied prior to arrest and trial. No person as to whom a dismissal and discharge have  
100 been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise  
101 giving a false statement by reason of his or her failure to disclose or acknowledge his or  
102 her arrest or trial in response to any inquiry made of him or her for any purpose. There  
103 may be only one discharge and dismissal under this section with respect to any person:  
104 *Provided*, That this limitation does not apply to anyone charged under Section 78-373(a)  
105 for possession of marijuana.

106  
107 (b) After a period of not less than six months which shall begin to run immediately upon  
108 the expiration of a term of probation imposed upon any person pursuant to this section,  
109 the person may apply to the court for an order to expunge from all official records all  
110 recordation of his or her arrest, trial, and conviction. If the court determines after a hearing  
111 that the person during the period of his or her probation and during the period of time prior  
112 to his or her application to the court under this section has not been guilty of any serious  
113 or repeated violation of the conditions of his or her probation, it shall order the  
114 expungement.

115  
116 (c) Notwithstanding any provision of this Code to the contrary, any person prosecuted  
117 pursuant to the provisions of this subdivision whose case is disposed of pursuant to the  
118 provisions of this section shall be liable for any court costs assessable against a person  
119 convicted of a violation of this subdivision. Payment of such costs may be made a  
120 condition of probation.