

Marshall City Council, Regular Session  
Monday, May 4, 2009

IN REGULAR SESSION Monday, May 4, 2009, AT 7:00 P.M. in the Council Chambers of Town Hall, 323 West Michigan Avenue, Marshall, MI, the Marshall City Council was called to order by Mayor Smith.

Roll was called:

Present: Council Members: Dyer, Metzger, K. Miller, L. Miller, Mayor Smith, Traver and Williams.

Also Present: Interim City Manager Tarkiewicz and Interim Clerk-Treasurer Habedank.

Absent: None.

The invocation was given by Richard Gerten of Family Bible Church.

Mayor Smith led the Pledge of Allegiance.

### ***APPROVAL OF THE AGENDA***

**Moved** K. Miller, supported L. Miller, to approve the agenda with the removal of closed session minutes from April 20, 2009 from the Consent Agenda. On a voice vote: **MOTION CARRIED.**

### ***PRESENTATIONS AND RECOGNITIONS***

Jaryl Day gave a presentation on "Swing, Jazz & Other Stuff 2009" which will be held July 10-12, 2009 at Stuart's Landing.

### ***INFORMATIONAL ITEMS***

None

### ***PUBLIC COMMENT ON AGENDA ITEMS***

Gardy Berezonski of 19150 B Drive North expressed the problem he had with the handling of the closed session and questioned why no names were given for the appointments.

John LaPietra of 386 Boyer Court was also curious about the appointments in item 12 and still believes there is a long way to go with the Nuisances ordinance.

### ***PUBLIC HEARINGS AND SUBSEQUENT COUNCIL ACTION***

None.

### ***OLD BUSINESS***

**Moved** Dyer, supported Traver, to adopt Chapter 92: Health and Sanitation: Nuisances Ordinance and repeal Sections 92.25 through 92.99 of the former Noxious Weeds Ordinance and have the notice prepared according to city charter. On a roll call vote -- ayes: Dyer, Metzger, K. Miller, L. Miller, Mayor Smith, Traver, and Williams; nays: none. **MOTION CARRIED.**

**Moved** Dyer, supported Williams, to amend the previous motion to include section 92.04.1 Conciliation Conference language as presented to the amendments of the Chapter 92: Health and Sanitation: Nuisances Ordinance. On a voice vote -- **MOTION CARRIED.**

## **THE CITY OF MARSHALL ORDAINS**

### **ORDINANCE 09-01**

#### **CHAPTER 92: HEALTH AND SANITATION: NUISANCES**

##### Section

##### Health Nuisances

##### 92.01 Definitions

##### 92.02 Jurisdiction

##### 92.03 Enforcement

##### 92.04 Nuisances Prohibited

##### 92.04.1 Conciliation Conference

##### 92.05 Abatement of Nuisances

##### 92.06 Abatement of Nuisances by the city; costs

##### 92.07 Appeals; hearing

##### 92.08 Other Laws and Regulations. Remedies Severable

##### 92.09 Vacated property

##### 92.10 Building Materials

##### 92.11 Penalties

#### **HEALTH NUISANCES**

#### **§ 92.01 DEFINITIONS**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BUILDING MATERIAL.** Building materials means, but is not limited to, lumber, bricks, concrete or cinder blocks, plumbing materials, electrical wiring or equipment, heating ducts or equipment, shingles, mortar, concrete or cement, nails, screws or any other materials used in constructing any structure.

**ENFORCEMENT OFFICER.** The Director of Public Safety or any employee assigned or designated by the Director of Public Safety, or by the City Manager, charged with the responsibility for administering and enforcing the provisions of this chapter.

**GARBAGE.** Rejected organic waste, including waste from the accumulation of animal, fruit or vegetable matter used or intended for use in the preparation, use, cooking, processing or storing of meat, fish, fowl, fruit, vegetable or other food; accumulations of leaves, branches, cut grass or

other vegetation. Excluded from the definition is organic waste which is contained within managed compost.

**HARBORAGE.** Any premises within which, or upon which is located rats, mice, grain moths, grain berries, flour beetles, cockroaches, or any other vermin, or traces, droppings, trails, runs or other evidence of the presence of rodents or vermin.

**LITTER.** All rubbish, refuse, garbage, trash, debris and waste material of any kind.

**OWNER.**

(a) Every person or entity holding legal or equitable title to a property or to real improvements on a property solely, jointly, by the entireties, in common, or as land contract vendee.

(b) Every person or entity who in fact has been empowered to act on behalf of, or receive process for, or as agent of the owner; or

(c) Every person or entity who has or exercises care, custody, dominion or control over any property;

(d) Every person or entity who is a record owner as demonstrated by a deed or other document of title recorded at the office of the Register of Deeds or otherwise substantiated; or

(e) Every person or entity listed as the taxpayer by Assessor's records.

**PROHIBITED VEGETATION**

(a) Poisonous or injurious vegetation, including but not limited to Poison ivy - *Toxicodendron radicans*, Poison oak - *Toxicodendron toxicarium* and Poison sumac - *Toxicodendron vernix*,

(b) Any grass, weeds or undergrowth higher than eight (8) inches except within the following areas:

(1) Managed landscaping;

(2) Undeveloped parcels which are naturally wooded or consist of perennial grasses or a combination thereof;

(3) Developed parcels which are naturally wooded or consist of perennial grasses or a combination thereof, and are consistent with the general character of the plant growth and landscaping in the surrounding neighborhood.

**PROPERTY.** Any parcel or tract of land, including any building, containers or items located thereon.

**WHOLLY ENCLOSED.** Having four adjoining walls and a roof. Any window or door opening in a wall shall be capable of being completely closed.

**§ 92.02 JURISDICTION**

The Enforcement Officer shall have jurisdiction throughout the city in the administration and enforcement of this chapter and relevant state laws including all regulations or amendments

hereafter adopted unless otherwise specifically stated. The burden of proof is on the Enforcement Officer to establish a violation of this Chapter. (Prior Code, § 17-12)

### **§ 92.03 ENFORCEMENT**

Any premises shall be subject to inspection by the Enforcement Officer, and the Enforcement Officer may collect such samples for laboratory analysis or other further inspection as he or she deems necessary for the enforcement of this chapter, as permitted by law. (Prior Code, § 17-13)

### **§ 92.04 NUISANCES PROHIBITED**

No owner shall commit, create, permit or maintain a nuisance. Nuisance shall include but not be limited to the creation or maintenance of litter, harborage, garbage, refuse, rubbish, noxious weeds, any activity prohibited by this chapter and any other act, omission, defect or condition which annoys, injures, or threatens injury, endangers or threatens to endanger, the health, safety, comfort or repose of the public.

#### **§92.04.1 CONCILIATION CONFERENCE**

When, in the opinion of the Enforcement Officer, an apparent violation of this Chapter could be resolved informally, the Enforcement Officer may offer a Property Owner an opportunity for a Conciliation Conference.

- (a) The purpose of a Conciliation Conference is to avoid unnecessary enforcement proceedings and to encourage a greater understanding of the issues involved in the apparent violation by all parties by providing a process for the Enforcement Officer and the Owner to present information to each other.
- (b) If given, notice of the Conciliation Conference shall be delivered to the owner identifying the time and place of a Conciliation Conference and the name, mailing address and telephone number of an individual designated by the City to conduct the conference. The notice shall provide that if the Owner does not attend or promptly re-schedule the Conciliation Conference, other enforcement action will ensue, as permitted by this Chapter.
- (c) The Conciliation Conference may result in an agreement between the City and the Property Owner concerning application of this Chapter to the Property. Such an agreement shall be binding upon both parties.
- (d) The failure of the Enforcement Officer to provide notice of a Conciliation Conference, or the failure of the owner to attend or promptly reschedule a conference shall have no effect on either party's procedural or substantive rights under this Chapter.

### **§92.05 ABATEMENT OF NUISANCES**

Any structure, condition or activity prohibited by this chapter may be abated by the Enforcement Officer in accordance with the following procedure:

**(a) WRITTEN NOTICE.** The Enforcement Officer shall give written notice to one or more owners, specifying the nature of the violation and the corrective action to be taken. The owner shall cure the violation within fifteen (15) days of the date notice is served.

**(b) RIGHT TO APPEAL.** The notice shall inform the recipient of his or her right to appeal the determination of the Enforcement Officer and the procedure to initiate the appeal.

**(c) NOTICE.** Notice shall be served by either of the following:

**(1)** Delivering the notice to an owner personally; or

**(2)** Mailing the notice by first class mail to an owner and posting the notice in some conspicuous place on the premises. If, after the expiration of the time limit in said notice, the person responsible for the creation, commission, or maintenance of any nuisance shall not have complied with the requirements thereof, the Enforcement Officer may abate the nuisance and the costs shall be assessed as provided herein. The foregoing notice requirements shall not apply in the event the nuisance, in the opinion of the Enforcement Officer, is likely to cause immediate death, injury or property damage.

#### **§ 92.06 ABATEMENT OF NUISANCES BY THE CITY; COSTS**

The costs of abatement incurred by the City shall constitute a personal debt to the owner or owners of the property. If there is more than one owner, liability for the costs shall be joint and several. If the owner does not pay the debt within 5 days after receiving an invoice for costs incurred, interest shall accrue at a rate of 6% per annum and the City may, at its option, assess the debt as a lien against the property, which may be billed as a part of the tax applicable to the land, provided notice has been given under § 92.05.

#### **§ 92.07 APPEALS; HEARING**

Appeals from a notice of abatement shall be made to the Zoning Board of Appeals. Appeal shall be made in accordance with the procedure set forth herein and failure of the person to comply with the provisions shall constitute grounds for denial of the appeal. The following procedures shall apply:

**(a) Time period for filing appeal.** Any person served with a notice to abate may make an appeal by completing and submitting to the City Clerk a claim of appeal form within ten (10) days of the service of the notice or order being appealed. Appeal forms shall be available at the City Clerk's office. Submission of any appeal shall constitute acknowledgment of service of the notice to abate. An appeal filed under this section shall stay abatement pending the Appeal Board decision.

**(b) Appeal Fee.** An appeal fee in an amount determined by resolution of the City Council shall be submitted with any claim of appeal.

**(c) Procedure Prior to Hearing.** Upon receipt of a completed claim of appeal and appeal fee, the City Clerk shall forward copies of the claim of appeal and a copy of the notice appealed from to members of the Appeal Board. The clerk shall schedule a hearing to be held within two weeks of the filing of the appeal. The clerk shall serve notice of the hearing to Appeal Board members, the Enforcement Officer and to the person filing the appeal. Notice to the person filing the appeal shall be by first class mail to the address provided on the claim of appeal form.

**(d) Hearing Procedures.** The Appeal Board shall provide the Appellant and the Enforcement Officer not less than twenty (20) minutes each to present testimony or other evidence in support of their respective positions. The Appeal Board shall, upon a de novo review, affirm, modify or reverse the notice being appealed any may, upon good cause, order a refund of the appeal fee to the appellant. The board's specific findings and determinations shall be preserved by the City Clerk or its designated representative. If the board affirms the Enforcement Officer's determination, in whole or in part, the Appellant shall comply with the decision of the board within ten (10) days of the hearing or by an alternate date if the board directs. Failure to comply with the board's decision shall be a violation of this code and the Enforcement Officer shall abate the nuisance in accordance with the decision of the Appeal Board and costs shall be assessed in accordance with Section 92.06.

**(e) Appeals to Circuit Court.** The decision of the Appeal Board is appealable by right to the Circuit Court.

#### **§ 92.08 OTHER LAWS AND REGULATIONS, REMEDIES SEVERABLE**

**(a)** The provisions of this chapter are minimum standards. Where any of the provisions of this chapter and the provisions of any other local or state law or regulations apply, the more restrictive shall prevail.

**(b)** Any action taken by the City to abate any nuisance under the provisions herein shall not affect the right of the City to institute proceedings against the person, persons or entity in violation and shall not affect the imposition of penalty described for such violation, nor prevent application by the City to any court of competent jurisdiction to restrain or enjoin violations or threatened violations.

#### **§ 92.09 VACATED PROPERTY**

All persons, including representatives of firms or corporations vacating any dwelling, storeroom, apartment or other property shall within 48 hours after vacating the property, remove or cause to be removed all litter from the property.

### **§ 92.10 BUILDING MATERIALS**

No person shall store, place, or permit to be stored or placed, or allowed to remain, any building materials unless (1) there is in force a valid building permit issued for the premises and such materials are intended for use in connection with such construction; or (2) are part of stock or trade of business located upon such property; or (3) are stored within a wholly enclosed structure.

### **§92.11 PENALTIES**

A violation of any section of this chapter is a municipal civil infraction.

### **§ 92.12 REPEALER**

Ordinance Sections 92.01 through 92.99, *HEALTH NUISANCES* (Ord. 04-01, passed 1-5-2004; Am. Ord. 99-2, passed 1-4-1999) and *NOXIOUS WEEDS* (Ord. 00-08, passed 9-18-2000) are repealed.

This ordinance is declared effective \_\_\_\_\_, 2009.

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Bruce Smith, MAYOR

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Dennis Habedank, CLERK-TREASURER

### ***REPORTS AND RECOMMENDATIONS***

**Moved** Dyer, supported K. Miller, to approve a Temporary Use Permit for 403 South Kalamazoo Avenue for the requested special events during 2009. On a roll call vote -- ayes: Metzger, K. Miller, L. Miller, Mayor Smith, Traver, Williams, and Dyer; nays: none. **MOTION CARRIED.**

**Moved** Williams, supported L. Miller, to accept the bid from Hard Rock HDD of Jackson, MI for the boring in the amount of \$36,000 and the bid from Resco of Middleton, OH for the wire in the amount of \$118,080 for the Industrial Park Feed. On a roll call vote -- ayes: K. Miller, L. Miller, Mayor Smith, Traver, Williams, Dyer, and Metzger; nays: none. **MOTION CARRIED.**

### ***APPOINTMENTS / ELECTIONS***

**Moved** K. Miller, supported L. Miller, to confirm the Mayor's recommendation to appoint Paul Beardslee as City Attorney. On a roll call vote -- ayes: L. Miller, Mayor Smith, Traver, Williams, Dyer, Metzger, and K. Miller; nays: none. **MOTION CARRIED**

**Moved** Williams, supported Metzger, to confirm the Mayor's recommendation to appoint Jim and Val Lippincott as City Assessors. On a roll call vote -- ayes: Mayor Smith, Traver, Williams, Dyer, Metzger, K. Miller, and L. Miller; nays: none. **MOTION CARRIED**

**Moved** Williams, supported Traver, to confirm the Mayor's recommendation to appoint Dennis Habedank as Clerk-Treasurer until the position is filled full-time. On a roll call vote -- ayes: Traver, Williams, Dyer, Metzger, K. Miller, L. Miller, and Mayor Smith; nays: none. **MOTION CARRIED**

***CONSENT AGENDA***

**Moved** Metzger, supported Traver, to approve the consent agenda as presented:

- approve the request from the Marshall Area Chamber of Commerce to hold the annual Fourth of July celebration on Saturday, July 4<sup>th</sup> at the Fountain Circle;
- approve the request from the Marshall Area Chamber of Commerce to hold Sidewalk Sales on Friday, August 7 and Saturday, August 8, 2009 in downtown Marshall;
- receive the Third Quarter Financial Report;
- minutes of the City Council Work Session held Wednesday, April 15, 2009;
- minutes of the Regular City Council meeting held Monday, April 20, 2009;
- approve city bills in the amount of \$268,335.73

**Motion** K. Miller, supported Dyer, to approve the consent agenda. On a roll call vote 6 ayes: Williams, Dyer, Metzger, K. Miller, L. Miller, Mayor Smith, and Traver; nays: none. **MOTION CARRIED**

***PUBLIC COMMENT ON NON-AGENDA ITEMS***

John LaPietra of 386 Boyer Court expressed his thanks to the time and attention put into the Nuisances Ordinance but still believes it is not as good as it could be.

Gardy Berezonski of 19150 B Drive North asked why the pay was not given for the appointments in Item 12 because that should be public information. He also inquired which council member was the FOIA Coordinator.

**Moved** Dyer, supported Williams to go into closed session under Section 8 of the Michigan Open Meetings Act specifically subsections C and H, to consider strategies in negotiations concerning collective bargaining agreements and to consider material exempt from disclosure by federal and state statute specifically an Attorney Client privilege letter from Attorney Beardslee. On a roll call vote 6 ayes: Dyer, Metzger, K. Miller, L. Miller, Mayor Smith, Traver, and Williams; nays: none. **MOTION CARRIED**

At 8:07 p.m. move to the conference room for the closed session

At 9:07 p.m. returned to open session.

The meeting was adjourned at 9:08 p.m.

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Bruce R. Smith, MAYOR

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Dennis Habedank, Clerk-Treasurer