

### **CALL TO ORDER**

IN REGULAR SESSION Monday, July 18, 2016 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 Reed.

### **ROLL CALL**

Roll was called:

Present: Council Members: Gerten, McNeil, Metzger, Miller, Mayor Reed, Schurig, and Williams.

Also Present: Assistant City Manager Dean and Clerk Nelson.

Absent: None.

### **INVOCATION/PLEDGE OF ALLEGIANCE**

Council Member Gerten gave the invocation and Mayor Reed led the Pledge of Allegiance.

### **APPROVAL OF THE AGENDA**

**Moved** Metzger, supported Williams, to approve the agenda with the addition of the Michigan South Central Power Agency invoice in the amount of \$668,400.50. On a voice vote – **MOTION CARRIED.**

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

None.

### **CONSENT AGENDA**

**Moved** Miller, supported Schurig, to approve the Consent Agenda:

- A. Minutes of the City Council Regular Session held on Monday, June 20, 2016;
- B. Approve city bills in the amount of \$ 1,550,515.45.

On a roll call vote – ayes: Gerten, McNeil, Metzger, Miller, Mayor Reed, Schurig, and Williams; nays: none. **MOTION CARRIED.**

### **PRESENTATIONS AND RECOGNITION**

None.

### **INFORMATIONAL ITEMS**

Event Reports were provided for the Calhoun County Prayer Gathering and the “Kari On” 5K Race.

### **PUBLIC HEARINGS & SUBSEQUENT COUNCIL ACTION**

**A. Cedar Street Right of Way:**

Kristin Bauer provided background on the request to vacate the east 55' of the Cedar Street right of way between Montgomery Street and Warren Street.

**Moved** Miller, supported McNeil, to recuse Council Member Metzger from voting on the Cedar Street right of way due to conflict of interest. On a voice vote – **MOTION CARRIED.**

Mayor Reed opened the public hearing to hear public comment regarding the proposed vacation of a 55' section of Cedar Street right of way.

Hearing no comment, the hearing was closed.

**Moved** Miller, supported Williams, to approve the resolution to vacate the east 55' of the Cedar Street right of way between Montgomery Street and Warren Street and retain the easements for current utilities within the proposed vacated section. On a roll call vote – ayes: Gerten, McNeil, Metzger, Schurig, and Williams; nays: none. **MOTION CARRIED.**

**CITY OF MARSHALL, MICHIGAN  
RESOLUTION #2016-28**

**RESOLUTION TO VACATE A SECTION OF CEDAR STREET**

WHEREAS, a request has been received to vacate the east 55' of the right-of-way of Cedar Street between Montgomery Street and Warren Street in the plat of the Upper Village, City of Marshall, and

WHEREAS, the City has the authority to vacate streets within the City under Article 7, Section 31 of the Michigan Constitution of 1963, and under Section 4h of Michigan's Home Rule City Act, and Section 2.23 of the City of Marshall Charter, as amended, and

WHEREAS, the City has conducted hearings on vacating the said portion of the said street, and has determined that the police and fire departments believe that the vacation will not adversely affect public safety, and

WHEREAS, Notice of the Public Hearing for vacating the east 55' of the right-of-way of Cedar Street between Montgomery Street and Warren Street was published by the City of Marshall on June 25, 2016, with a notice of the hearing mailed via first class mail to all property owners of record for any property adjoining the parcel in question; and

WHEREAS, the City has determined that the street right of way recommended for vacation is not needed by the city by Department of Public Works or Public Safety Department.

NOW THEREFORE BE IT RESOLVED, the City of Marshall hereby vacates the east 55' of the right-of-way of Cedar Street between Montgomery Street and Warren

Street and more particularly described as:

The east 55' of the right-of-way of Cedar Street between Montgomery Street and Warren Street dedicated to the public and now being vacated and reverted to adjoining land owner, being described more particularly as: The Easterly 55 feet of Cedar Street, between Montgomery Street and Warren Street, plat of the City of Marshall, Upper Village, as recorded in plat of Calhoun County Register of Deeds, reserving easements for all existing utilities.

BE IT FURTHER RESOLVED, that the vacated right-of-way shall become part of the adjacent property to the East of the vacated Cedar Street; and

BE IT FURTHER RESOLVED, that the city Clerk shall be, and hereby is, authorized for and on behalf of the city to execute and deliver any documents necessary or appropriate.

Dated: July 18, 2016

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed seal of said City of Marshall, this 18<sup>th</sup> day of July, 2016.

Trisha Nelson, City Clerk

**B. Changes to §156.003 and §156.224 Donation Bins:**

Natalie Dean provided background regarding the proposed changes to the ordinance. On May 11, 2016, the Planning Commission considered staff and City Attorney suggested changes to the ordinance; a public hearing was held the same night as well.

Mayor Reed opened the public hearing to hear comment regarding the changes to §156.003 and §156.224 Donation Collection Bins ordinance.

Hearing no public comment, the hearing was closed.

**Moved** Metzger, supported McNeil, to accept the Planning Commission's recommendation and approve the changes to §156.003 and §156.224 Donation Collection Bins ordinance. On a roll call vote – ayes: Miller, Mayor Reed, Gerten, McNeil, and Metzger; nays: Schurig and Williams. **MOTION CARRIED.**

**CITY OF MARSHALL  
ORDINANCE #2016-06**

AN ORDINANCE TO AMEND CITY OF MARSHALL CODE, CHAPTER AND SECTION 156.003 DEFINITIONS AND SECTION 156.224 DONATION COLLECTION BINS.

THE CITY OF MARSHALL ORDAINS:

**Section 1.** That section **§156.003** of the Marshall City Code, is hereby modified to delete the definitions:

***DONATION COLLECTION BIN.*** A receptacle or container designed with a door, slot or other opening which is intended to receive items donated from the public such as clothing, household items, or other salvageable personal property. This term does not include recycle bins for the collection of recyclable material, any rubbish or garbage receptacle.

***DONATION COLLECTION BIN OPERATOR.*** A person who owns, operates or otherwise is in control of donation collection bins to solicit collections of salvageable personal property.

**Section 1a.** That section **§156.224** of the Marshall City Code, is hereby modified to read:

**A. Intent and definitions.**

(1) The collection boxes ordinance is intended to be a regulatory enactment in the public's health, safety and welfare for the protection of all citizens who use collection boxes. The intent of this collection boxes article is to impose restrictions and conditions on all collection boxes in the city so that they are – and remain – clean and safe and do not create hazards to pedestrians.

(2) Definitions.

(a) *Collection box* means any metal container, receptacle, or similar object that is located on any parcel or lot of record within the city and that is used for soliciting and/or collecting the receipt of clothing, household items or other personal property. This term applies to all such containers regardless of whether the solicitation of property is made by a for-profit or non-profit entity. This term does not include recycle bins for the collection of recyclable material, any rubbish or garbage receptacle or any collection box located within an enclosed building.

(b) *Director* means the Director of Community Services.

(c) *Operator* means a person who owns, operates or otherwise is in control of collection boxes to solicit collections of salvageable personal property.

(d) *Permittee* means a person over 18 years of age or an entity or that is issued a permit authorizing placement of collection box(es) on real property.

(e) *Property owner* means the person or entity that is an owner of real property where the collection box(es) are located.

(f) *Real property, property or land* means a lot of record located in the City of Marshall.

**B. Collection box permit.**

No later than 90 days from the effective date of this article, no person shall place, operate, maintain or allow any collection box on any real property in the City of Marshall without first obtaining an annual permit issued by the department of community services to locate a collection box.

**C. Application for a permit.**

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Monday, July 18, 2016

- (1) Any person desiring to secure a permit shall make an application to the department of community services.
- (2) A permit shall be obtained for each collection box(es) proposed. A separate fee shall be paid for each collection box.
- (3) The application for a permit shall be upon a form provided by the department and shall:
  - (a) Be signed by an individual who is an officer, director, member or manager of an entity applicant. The applicant shall furnish the following information:
    - i. Name, address and email of all partners or limited partners of a partnership applicant, all members of an LLC applicant, all officers and directors of a non-publicly traded corporation applicant, all stockholders owning more than five percent of the stock of a non-publicly traded corporate applicant, and any other person who is financially interested directly in the ownership or operation of the business, including all aliases.
    - ii. Date of birth of individuals and date of establishment of an entity or the birthdate of an individual applicant.
    - iii. Whether the applicant has previously received a permit for a collection box in the city or operates a collection box or similar type receptacle without a permit in the city.
    - iv. The name, address, email and telephone number of a contact person for all matters relating to a collection box located in the city.
  - (b) Include the physical address of the real property where the collection box is proposed to be located.
  - (c) Include a scaled drawing sufficient to illustrate the proposed location of the collection box on the real property, the dimensions of the proposed collection box and that the location complies with the requirements of subsection 4.(a)(6) of this Ordinance.
  - (d) Include on a form provided by the director an affidavit from the property owner providing written permission to place the collection box(es) on the property, as well as an acknowledgment from the property owner of receipt of a copy of this article, if the applicant is not the owner of the real property where the collection box is to be placed. For purposes of this subsection, the affidavit and acknowledgment may be executed by an individual who is an officer, director, member or manager of an entity owning the property.
  - (e) Include a nonrefundable fee in an amount established by resolution of city council.
- (4) Within ten days of receiving an application for a permit, the director shall notify the applicant whether the permit is granted or denied. If the director denies an application, the director shall state in writing the specific reasons for denial.

(5) No person to whom a permit has been issued shall transfer, assign or convey such permit to another person or legal entity.

(6) A person shall be issued a permit by the director if the requirements of this article are satisfied.

(7) Upon approval, the City shall provide a permittee with 1 permit sticker for each approved permit. The sticker shall display the local unit's seal, a permit number, and an expiration date. The size of the sticker shall be 4 inches by 4 inches. The color of the sticker shall be the same color that the department of state uses for motor vehicle registration decals for that year. The permittee shall place the sticker in a conspicuous place on the front panel of the textile recycling bin. On request of the permittee, the local unit shall provide a replacement sticker for a fee of \$10.00 if the original sticker is damaged or lost.

**D. Requirements for a permit.**

(1) A permittee shall operate and maintain, or cause to be operated and maintained, all collection boxes located in the city for which the permittee has been granted a permit as follows:

- (a) Collection boxes shall be metal and be maintained in good condition and appearance with no structural damage, holes or visible rust and shall be free of graffiti.
- (b) Collection boxes shall be locked or otherwise secured in such a manner that the contents cannot be accessed by anyone other than those responsible for the retrieval of the contents.
- (c) Collection boxes shall have in, at minimum, one-half-inch lettering visible from the front of each collection box the name, address, email, website and phone number of the operator, as well as whether the collection box is owned and operated by a for profit company or a not for profit company. The collection box shall not have information, advertising or logos other than those relating to the operator.
- (d) Collection boxes shall be serviced and emptied as needed, but at least every 30 days.
- (e) The permittee and property owner shall maintain, or cause to be maintained, the area immediately surrounding the collection boxes, free from any junk, debris, overflow items or other material. The property owner shall be responsible to the extent provided by law for the city's cost to abate any nuisance.
- (f) Collection boxes shall:
  - i. Not be permitted on any land used or zoned for residential purposes;
  - ii. Not be permitted on any unimproved parcel, nor where the principal use of the land has been closed or unoccupied for more than 30 days;
  - iii. Not be less than 1,000 feet from another collection box as measured along a straight line from one box to the other. Notwithstanding this separation requirement, up to two collection boxes on a single lot of

- record are permitted if the two collection boxes are side by side and are no more than one foot apart and are owned by the same permittee;
- iv. Not exceed seven feet in height, six feet in width and six feet in depth;
  - v. Not cause a visual obstruction to vehicular or pedestrian traffic;
  - vi. Not be placed closer than ten feet from: (i) a public or private sidewalk except that this provision does not apply to a private sidewalk as long as the private sidewalk maintains a five-foot clearance; (ii) a public right-of-way; (iii) a driveway; or (iv) a side or rear property line of adjacent property used for residential purposes;
  - vii. Not cause safety hazards with regard to a designated fire lane or building exit;
  - viii. Not interfere with an access drive, off-street parking lot maneuvering lane and/or required off-street parking space to an extent which would cause safety hazards and/or unnecessary inconvenience to vehicular or pedestrian traffic;
  - ix. Not encroach upon an access drive, off-street parking lot maneuvering lane and/or required off-street parking space; and
  - x. Be placed on a level, hard (asphalt or concrete) paved, dust-free surface.

**E. Term of permit and renewal of permit.**

- (1) The permit year shall begin on July 1 in each year and shall terminate on June 30 of the next calendar year. An annual permit issued between July 1 and June 30 of the subsequent year shall expire on June 30 of the calendar year next following issuance of the permit.
- (2) A collection box permit shall be renewed annually. The application for renewal must be filed not later than 30 days before the permit expires. The application for renewal shall be upon a form provided by the director.
- (3) The director shall either approve or deny the renewal of a permit within ten days of receipt of the complete renewal application and payment of the renewal fee. Failure of the director to act before expiration of the permit shall constitute approval of the renewal of the permit.
- (4) A permit renewal fee set by resolution of the city council shall be submitted with the application for renewal.
- (5) Prior to expiration of the permit, the permittee may voluntarily cancel the permit by notifying the director in writing of the intent to cancel the permit. The permit shall become void upon the director's receipt of a written notice to [of] intent to cancel the permit.
- (6) The director shall approve the renewal of a permit if the director finds that no circumstances existed during the term of the permit which would cause a violation to exist, and that at the time of submission of the application for renewal, or at any time during the

renewal of the application for renewal, there were not circumstances inconsistent with any finding required for approval of a new permit. Any permittee whose permit has been revoked shall be denied renewal of the permit for the subsequent calendar year.

(7) If the permit expires and is not renewed, the collection box(es) must be removed from the real property within a maximum of ten days after expiration of the permit.

#### **E. Revocation of permit, removal of collection boxes and liability.**

(1) The director shall have the right to revoke any permit issued hereunder for a violation of this article. Any of the grounds upon which the director may refuse to issue an initial permit shall also constitute grounds for such revocation. In addition, the failure of the permittee to comply with the provisions of this article or other provisions of this Code or other law shall also constitute grounds for revocation of the permit. The director shall provide a written notification to the permittee and property owner stating the specific grounds for a revocation and a demand for correction and abatement. The notice shall allow a maximum of ten days from mailing of the notice to correct or abate the violation. Upon failure to make the correction or abatement, the permit shall be revoked by the director and, thereafter, the permittee shall not be eligible for a permit on the property for the subsequent calendar year.

(2) Upon revocation, the collection box shall be removed from the real property within ten days and, if not so removed within the time period, the city may remove, store or dispose of the collection box at the expense of the permittee and/or real property owner. All costs associated with the removal of the collection box incurred by the city, or the city's contractor shall be the responsibility of the property owner. If such obligation is not paid within 30 days after mailing of a billing of costs to the property owner, the city may place a lien upon such real property enforceable as a tax lien in the manner prescribed by the general laws of this state against the property and collected as in the case of general property tax. If the same is not paid prior to the preparation of the next assessment roll of the city, the amount shall be assessed as a special tax against such premises on the next assessment roll and collected thereunder.

(3) A permit for a collection box may be revoked if any governmental authority or agency determines that the collection box has violated the Michigan Consumer Protection Act and/or the Charitable Organizations and Solicitations Act.

#### **F. Appeal to Zoning Board of Appeals.**

Any person aggrieved by the decision rendered by the director in granting or denying an application for a permit under this article or in revoking a permit issued under this article may appeal the decision to the Zoning Board of Appeals. The appeal shall be made by filing a written notice of appeal not later than ten days after receiving notice of the decision of the director with the department of community development setting forth the grounds for the appeal. The Zoning Board of Appeals may grant relief if the applicant presents clear and convincing evidence that there was an error in the decision of the director.

#### **G. Penalty and remedies.**

(1) In addition to revocation of permit pursuant to subsection 6, any person violating the provisions of this article is guilty of a civil infraction.

(2) In addition to the penalty provided in subsection (a) of this section, any condition caused or permitted to exist in violation of the provisions of this article, or any ordinance, shall be deemed a new and separate offense for each day that such condition continues to exist.

(3) Nothing in this article shall prevent the city from pursuing any other remedy provided by law in conjunction with or in lieu of prosecuting persons under this section for violation of this article.

(4) The real property owner and permittee shall be jointly and severally liable for each violation and for payment of any fine and costs of abatement.

(5) No fines shall be imposed for a violation of this article until 90 days after its effective date. All collection boxes existing at the effective date of the article shall apply for a permit as required herein within 30 days of the effective date. Any collection boxes not in compliance with this article after 90 days of the effective date shall be subject to all remedies for violation as provided herein.

**Section 2.** This Ordinance [or a summary thereof as permitted by MCL 125.3401] shall be published in the *Marshall Chronicle*, a newspaper of general circulation in the City of Marshall qualified under state law to publish legal notices. This Ordinance shall be recorded in the Ordinance Book and such recording shall be authenticated by the signatures of the Mayor and the City Clerk.

**Section 3.** This Ordinance is declared to be effective immediately upon publication.

Adopted and signed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Jack Reed, MAYOR

\_\_\_\_\_  
Trisha Nelson, CITY CLERK

I, Trisha Nelson, being duly sworn as the City Clerk for the City of Marshall, hereby certify that the foregoing is a true and complete copy of an ordinance approved by the City Council, City of Marshall, County of Calhoun, State of Michigan, at a regular meeting held on July 18, 2016, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available by said Act.

\_\_\_\_\_  
Trisha Nelson, CITY CLERK

**OLD BUSINESS**

None.

## **REPORTS AND RECOMMENDATIONS**

### **A. Comcast Video Service Local Franchise Agreement:**

**Moved** Williams, supported Metzger, to table consideration of the Comcast Video Service Franchise Agreement until the next meeting on August 1, 2016 and direct staff to meet with Comcast. On a voice vote – **MOTION CARRIED.**

### **B. Street Reconstruction Bids:**

**Moved** Williams, supported Gerten, to approve the bid from Thompson Construction Co. of Coldwater, MI in the amount of \$60,345.38 for the reconstruction of Turquoise Trail and No. Park Street, with a contingency amount of \$9,654.62 for possible additional quantities, for a total project cost of \$70,000. On a roll call vote – ayes: Schurig, Williams, Gerten, and Mayor Reed; nays: McNeil, Metzger, and Miller. **MOTION CARRIED.**

### **C. Shearman Park Bids:**

**Moved** Gerten, supported Schurig, to approve the bid from Parrish Excavating, Inc. of Quincy, MI in the amount of \$124,934.00 for the development of Shearman Park. On a roll call vote – ayes: Williams, Gerten, McNeil, Metzger, Miller, Mayor Reed, and Schurig; nays: none. **MOTION CARRIED.**

## **APPOINTMENTS/ELECTIONS**

### **A. DDA/LDFA Appointments:**

**Moved** Williams, supported Metzger, to approve the reappointment of Catherine Yates and JP Walters to the Downtown Development Authority and Local Development Finance Authority with terms expiring September 15, 2020. On a voice vote – **MOTION CARRIED.**

### **B. Planning Commission Appointment:**

**Moved** Miller, supported Metzger, to approve the appointment of Jason Bomia to the Planning Commission with a term expiring November 1, 2018. On a voice vote – **MOTION CARRIED.**

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

Tina Yost, candidate for Circuit Court Judge, spoke regarding her credentials and background for the position.

John Sims, candidate for Circuit Court Judge, spoke regarding his candidacy.

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Robert Costa spoke regarding his desire to run for the City Council Ward 5 seat in the November election.

**COUNCIL AND MANAGER COMMUNICATIONS**

**ADJOURNMENT**

The meeting was adjourned at 8:30 p.m.

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Jack Reed, Mayor

\_\_\_\_\_  
Trisha Nelson, City Clerk