

CALL TO ORDER

IN REGULAR SESSION Monday, December 6, 2010 at 7:00 P.M. in Council Chambers of Town Hall, 323 West Michigan Avenue, Marshall, MI, the Marshall City Council was called to order by Mayor Smith.

ROLL CALL

Roll was called:

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

Also Present: City Manager Tarkiewicz

Absent: None.

INVOCATION/PLEDGE OF ALLEGIANCE

Mike Donahue of Four Winds Christian Fellowship gave the invocation and Mayor Smith led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

Moved Williams, supported Mankerian, to approve the agenda as presented. On a voice vote: **MOTION CARRIED.**

PRESENTATIONS AND RECOGNITION

A. Christopher Correnti, VP of AGC Flatglass, was present to ask City Council to reconsider their decision to seek a Tax Clawback from AGC.

B. Mark Kettner of Rehmann Robson gave a presentation on the FY 2010 Audit for the City of Marshall.

C. Recreation Superintendent Teri Trudeau presented the FY 2010 Annual Report for the Recreation Department.

INFORMATIONAL ITEMS

Council member Williams informed the public that Council toured the new 911 center for the Work Session to view the new operations. Also, the FOIA policy committee had their first meeting to address issues and there will be a report at the next meeting.

PUBLIC COMMENT ON AGENDA ITEMS

Wayne Booton of 509 North Drive East shared results of a survey he conducted on Main Street regarding the parking study.

John LaPietra of 386 Boyer Court commented on the work going into the FOIA

policy revision and his hopes of addressing it at the next council meeting.

PUBLIC HEARINGS & SUBSEQUENT COUNCIL ACTION

A. Conflict of Interest Policy:

Mayor Smith opened the public hearing to hear comment on the revisions to the Conflict of Interest Policy.

Brian Munger of 120 S. Grand Street previously attended the work session held on the Conflict of Interest Policy changes where discussion took place regarding changes that needed to be made to the policy. He inquired as to what changes have been made since that meeting.

John LaPietra of 386 Boyer Court feels that conflict should be addressed on other kinds of things and not just financial interest and he made some recommendations regarding changes.

Wayne Booton of 509 North Drive East commented he is not aware of any claims of corrupt as description of this policy.

Brian Munger of 120 S. Grand Street feels the procedural part of the city charter needs to be revisited as well as the conflict of interest policy.

Hearing no further comment the hearing was closed.

Moved Dyer, supported Miller, to adopt the proposed revision to the Conflict of Interest Policy and be transmitted to other City Boards and Officials as presented in the policy.

Ken Jendryka of 617 N. Kalamazoo feels the council should look at other matters beyond financial interest that affect conflict of interest.

Moved Dyer, supported Williams, with a friendly amendment to delete from Article II, sub paragraph (c), delete paragraph (2) and renumber paragraph (3) and (4) accordingly.

John LaPietra of 386 Boyer Court asked for clarification on the friendly amendment.

Moved Dyer, supported Williams, with a friendly amendment to add to Article II, sub paragraph (c), paragraph (1): a member of the individuals immediate family, and eliminate the word member between owner and partner.

Moved Dyer, supported Williams, with a friendly amendment to amend the last

paragraph, Article V (c), by changing the word chapter to policy and changing the word complete to complaint.

On a roll call vote – ayes: Mankerian, Metzger, Miller, Mayor Smith, Traver, Williams, and Dyer ; nays: none. **MOTION CARRIED.**

CONFLICT OF INTEREST POLICY DECEMBER 6, 2010

Article I. DECLARATION OF PURPOSE

The City declares that elected and appointed public office and public employment is a public trust and any effort to realize personal gain through official conduct is a violation of that trust. It is the opinion of the Council that the people of the City are entitled to assurance that conflicts of interest of city officials and employees are eliminated to the fullest extent possible and that violations of rules of ethical conduct are investigated and handled appropriately.

Article II. DEFINITIONS

As used in this policy:

- (a) “Appointed Body of the City” means an authority, department, commission, committee, council, board, bureau, division, office, legislative body or other agency of the City of Marshall.
- (b) “Business” includes, but is not limited to, a corporation, Limited Liability Company, partnership, sole proprietorship, firm, enterprise, franchise, unincorporated association, organization, self-employed individual, holding company, joint stock company, receivership, trust, activity or other entity whether or not organized for profit.
- (c) “Business with which an individual is associated” means a Business in which any of the following applies:
 - (1) The individual or a member of the individuals immediate family, is an owner, partner, director, officer or employee, or the individual is an independent contractor deriving more than Six Hundred (\$600) Dollars compensation during any calendar year:

- (2) The individual or a member of the individual's immediate family is a stockholder of close corporation stock which is worth at least one thousand dollars (\$1,000) at fair market value or which represents more than a five percent equity interest; or
 - (3) The individual or a member of the individual's immediate family is a stockholder of publicly traded stock which is worth at least twenty-five thousand dollars (\$25,000) at fair market value or which represents more than ten percent equity interest, other than publicly traded stock under a trading account if the individual reports the name and address of the stockholder.
- (d) "City" means the City of Marshall, Michigan.
 - (e) "Council Member" means a duly elected or appointed member of the Marshall City Council.
 - (f) "Compensation" means any money, property, thing of value, or benefit conferred upon or received by any person in return for services rendered or to be rendered.
 - (g) "Confidential information" means information which has been obtained in the course of one's employment with the City or in fulfilling the duties of one's office with the City, which information is not known by or available to members of the general public and which has been obtained on the basis of the promise of confidentiality or which is required to be held confidential by law or regulation or which the employee or officer has been instructed is being held confidentially.
 - (h) "Decision making authority" means authorized to exercise or vested with the power to adopt laws, regulations or standards, render binding decisions, establish executive policy, execute contracts or determine questions involving substantial discretion on behalf of the City or an Appointed Body of the City.
 - (i) "Employee" means an employee of the City.
 - (j) "Immediate family" means a child of an individual, a spouse of an individual, or an individual claimed by that individual or individual's spouse as a dependent under the Internal Revenue Code, or the parents, parents-in-law, stepparents, stepbrothers or stepsisters of an individual.
 - (k) "Loan" means a transfer of money, property or anything else of ascertainable monetary value in exchange for an obligation, conditional or not, to repay in whole or in part.

- (l) "Official" means an appointed official or a duly appointed member of an Appointed Body of the City.
- (m) "Substantial" means anything of significant worth and importance or of considerable value as distinguished from something of *De Minimis* value or merely nominal worth.

Article III. PROHIBITIONS

- (a) No person shall offer or give to any of the following persons a gift, loan, contribution, reward or promise of future employment based on an agreement that the vote or official action or decision of an official or employee would be influenced thereby:
 - (1) An official or employee;
 - (2) A member of the immediate family of an official or employee; or
 - (3) A business with which an official or employee or an immediate family member of an official or employee is associated.
- (b) No person referred to in subsection (a) above shall accept a gift, loan, contribution, reward or promise of future employment based on an agreement that the vote or official action or decision of a Council Member, official or employee would be influenced thereby.
- (c) No Council Member, official or employee shall divulge to any unauthorized person confidential information acquired in the course of holding his/her position in advance of the time prescribed by the City, except as otherwise required by law.
- (d) No Council Member, official or employee shall make unauthorized use of his/her public position, or any confidential information received through holding such public position, to obtain financial gain for himself/herself, a member of his/her immediate family or a business with which such individual is associated. This provision shall not prevent the Council Member, official or employee from accepting his/her regular compensation as a public Council Member, official or employee.
- (e) No Council Member, official or employee shall make unauthorized use of personnel, resources, property or funds under his/her official care and control to obtain financial gain for himself/herself, a member of his/her immediate family, or a business with which he/she is associated.
- (f) No Council Member, official or employee shall act as an attorney, agent or representative of a person other than himself/herself, before the Appointed

Body of which such Council Member, official or employee is a member or employee. This provision shall not prevent an officer or employee from performing his/her responsibilities as an officer or employee.

- (g) No Council Member, official or employee shall act on behalf of the City in the making of policy statements, in authorizing any action, agreement or contract, or in promising to prevent any future action, when such Council Member, official or employee has, in fact, no authority to do so.
- (h) No city Council Member, official or employee of the City shall engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with the discharge of the official duties of the employee's position or when that employment may tend to impair his/her independent judgment in connection with the performance of official duties.

Article IV. PARTICIPATION IN GOVERNMENTAL DECISIONS

- (a) No employee shall make or participate in making a decision in his/her capacity as an employee knowing that the decision will provide such employee, a member of the employee's immediate family, or a business with which the employee is associated, an individual financial benefit of more than a De Minimis nature which is distinguishable from the benefits of the person as a member of the public or as a member of a broad segment of the public. An employee who proposes to make or participate in making a decision under this subsection, which may place him/her in an apparent conflict of interest, shall deliver a written statement to his/her supervisor with a copy to the City Manager disclosing the apparent conflict of interest and explaining why, despite the apparent conflict, he/she is able to make or participate in making the decision fairly, objectively and in the public interest. The supervisor, after consulting with the City Manager, shall determine whether to allow the employee to participate in the decision.
- (b) No Council Member or official shall make or participate in making a decision in his/her capacity as a Council Member or official knowing that the decision will provide such Council Member or official, a member of the Council Member's or official's immediate family, or a business with which the Council Member or official is associated, an individual financial benefit of more than a De Minimis nature which is distinguishable from the benefits of the person as a member of the public or as a member of a broad segment of the public. A Council Member or official who proposes to make or participate in making a decision under this subsection, which places or may place him/her in an apparent conflict of interest, shall deliver a written statement to the Council or the Appointed Body of which

such official is a member, and to the City Manager disclosing the apparent conflict of interest and explaining why, despite the apparent conflict, he/she is able to make or participate in making the decision fairly, objectively and in the public interest.

- (c) Except as otherwise prohibited by law, a member of Council may make or participate in making a decision which may place him/her in a apparent conflict of interest if the member first delivers a statement to the Mayor disclosing the apparent conflict of interest and explaining why, despite the apparent conflict, such member of Council is able to vote and otherwise participate fairly, objectively and in the public interest. The statement shall be entered in full in the minutes or other official record of the legislative body.
- (d) All city Appointed Bodies shall exempt officials from making, or participating in the making of a governmental decision which the official knows will provide the official, a member of the official's immediate family, or a business with which the official is associated, with a financial benefit of more than a De Minimis nature which is distinguishable from the benefits to the person as a member of the public or as a member of a broad segment of the public.

Article V. COMPLAINTS

- (a) Any person may file a signed written complaint with the City Manager or designee alleging a violation of this policy. Upon receipt of such a complaint, the City Manager shall ensure that a proper investigation is undertaken to determine whether it is more likely than not that a violation of this policy occurred.
- (b) If the City Manager, in consultation with the City Attorney, determines that it is more likely than not that a violation occurred, the City Manager and/or City Attorney will advise the City Council of such violation, and provide recommendation or resolution of the conflict or appropriate disciplinary measures.
- (c) No person shall knowingly make a false statement in a complaint submitted pursuant to this policy.
- (d) The City Manager shall give written notice, including notice of the nature of the complaint, by certified mail, return receipt requested, to the person under investigation, within twenty-one (21) days after the receipt of a written complaint against such person.
- (e) Upon receipt of notice of the complaint, the city official/employee has the opportunity to file a written explanation/response to the City Manager. The

explanation/response must be delivered within ten (10) days of receipt of notice.

Article VI. INVESTIGATIVE ASSISTANCE

All Appointed Bodies shall assist the City Manager or designee and the City Attorney's office in investigating any complaints regarding possible violations of this policy and in taking appropriate action or disciplinary measures for any violations of this policy.

Article VII. DISTRIBUTION OF COPIES OF POLICY

The City Manager or designee shall provide a copy of this policy to each official and employee of the City.

PUBLIC COMMENT ON NON-AGENDA ITEMS

Nancy Wood, Marshall House Resident, spoke on behalf of some residents with a list of concerns with the apartments.

John LaPietra of 386 Boyer Court commented on the revised Conflict of Interest policy and asked Council if they planned on doing another printing of the City Charter.

OLD BUSINESS

A. Pratt Park – Time Extension:

Moved Williams, supported Metzger, to grant the request by Allman Development for a time extension from January 1, 2011 to April 1, 2011 to finish the exterior of 1148 Woodruff. On a roll call vote – ayes: Metzger, Miller, Mayor Smith, and Williams; nays: Dyer, Mankerian, and Traver. **MOTION CARRIED.**

B. Proposed Rules for Ordinance 73.19.1: Parking Limited Between 3:00 a.m. and 6:00 a.m.:

Moved Williams, supported Metzger, to approve the proposed parking rules for Ordinance 73.19.1. On a voice vote – **MOTION CARRIED.**

Moved Metzger, supported Williams, to extend the meeting time beyond 10:00 p.m. On a voice vote – **MOTION CARRIED.**

C. Revised Ordinance 134.03: DISORDERLY HOUSE:

Moved Dyer, supported Miller, to approve Ordinance 134.03: DISORDERLY HOUSE. On a roll call vote – ayes: Mayor Smith, Traver, Williams, Dyer, Mankerian, Metzger, and Miller; nays: none. **MOTION CARRIED.**

**CITY OF MARSHALL
ORDINANCE #2010-10**

**AN ORDINANCE TO AMEND CITY OF MARSHALL CODE. CHAPTER 134:
OFFENSES AGAINST PUBLIC PEACE AND SAFETY**

THE CITY OF MARSHALL ORDAINS:

Section 1. That section 134.03 DISORDERLY HOUSE of the Marshall City Code, is hereby amended to read as follows:

§ 134.03 DISORDERLY HOUSE.

(A) No person shall permit or suffer any house, building or other place owned or occupied by him to be a resort for noisy, boisterous or disorderly persons, nor permit or suffer to remain therein any noisy, boisterous or disorderly persons.

(B) No person shall attend, frequent, operate or be an occupant of any place where prostitution, gambling or the illegal sale or use of intoxicating liquor is permitted or conducted or where any other illegal business or occupation is permitted or conducted.

This Ordinance is declared to be effective immediately upon publication.

Adopted and signed this _____ day of _____, 2010.

Bruce R. Smith, MAYOR

Sandra Bird, CLERK-TREASURER

I, Sandra Bird, being duly sworn as the Clerk-Treasurer 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 December 6, 2010, 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.

Sandra Bird, CLERK-TREASURER

D. Ordinance 134.10: WINDOW PEEPING:

Moved Miller, supported Dyer, to approve Ordinance 134.10: WINDOW PEEPING. On a roll call vote – ayes: Williams, Dyer, Mankerian, Metzger, Miller, Mayor Smith, and Traver; nays: none. **MOTION CARRIED.**

**CITY OF MARSHALL
ORDINANCE #2010-11**

**AN ORDINANCE TO AMEND CITY OF MARSHALL CODE. CHAPTER 134:
OFFENSES AGAINST PUBLIC PEACE AND SAFETY**

THE CITY OF MARSHALL ORDAINS:

Section 1. That section 134.10 Window Peeping of the Marshall City Code, is hereby amended to read as follows:

§ 134.10 WINDOW PEEPING.

It shall be unlawful for a person to look, peer or peep into any window on the property of another person under circumstances which **would be likely to cause affront or alarm to a reasonable person if he or she were aware of such activity.**

(Prior Code, § 18-61)

Statutory reference:

Disorderly persons, see M.C.L.A. § 750.167; M.S.A. § 28.364

This Ordinance is declared to be effective immediately upon publication.

Adopted and signed this _____ day of _____, 2010.

Bruce R. Smith, MAYOR

Sandra Bird, CLERK-TREASURER

I, Sandra Bird, being duly sworn as the Clerk-Treasurer 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 December 6, 2010, 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.

Sandra Bird, CLERK-TREASURER

REPORTS AND RECOMMENDATIONS

A. Downtown Parking Needs Assessment Proposal:

Moved Miller, supported Dyer, to accept the proposal from Walker Parking Consultants of Kalamazoo for \$20,000 plus expenses to perform a downtown parking assessment. On a roll call vote – ayes: Dyer, Mankerian, Metzger, Miller, Mayor Smith, Traver, and Williams; nays: none. **MOTION CARRIED.**

APPOINTMENTS / ELECTIONS

None.

CONSENT AGENDA

Moved Dyer, supported Williams, to approve the consent agenda as presented:

- A. Approve Temporary Traffic Control Orders #92 and #93;
- B. Approve the listing of the 2011 Boards and Commissions Positions that are scheduled to expire and the term of office;
- C. Approve the 2011 City Council Meeting Dates;
- D. Approve minutes of the City Council Work Session and Regular Session held on Wednesday, November 17, 2010;
- E. Approve city bills in the amount of \$369,353.94.

On a roll call vote – ayes: Metzger, Miller, Mayor Smith, Traver, Williams, Dyer, and Mankerian; nays: none. **MOTION CARRIED.**

COUNCIL AND MANAGER COMMUNICATIONS

None.

ADJOURNMENT

The meeting was adjourned at 10:30 p.m.

Bruce R. Smith, Mayor

Sandra Bird, Clerk-Treasurer