

**CALL TO ORDER**

IN REGULAR SESSION Monday, January 18, 2011 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 Dyer.

**ROLL CALL**

Roll was called:

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

Also Present: City Manager Tarkiewicz

Absent: None.

**INVOCATION/PLEDGE OF ALLEGIANCE**

Brandon Crawford of Grace Baptist Church gave the invocation and Mayor Dyer led the Pledge of Allegiance.

**APPROVAL OF THE AGENDA**

**Moved** Metzger, supported Williams, to approve the agenda with the deletion of item 12F Police Vehicle Replacement Purchase and the addition of item 13B Library Board Appointment. On a voice vote: **MOTION CARRIED.**

**CONSENT AGENDA**

**Moved** Miller, supported Metzger, to approve the consent agenda:

- A. Approve minutes of the City Council Work Session and Regular Session held on Monday, January 3, 2011;
- B. Approve city bills in the amount of \$1,234,354.55.

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

**INFORMATIONAL ITEMS**

None.

**PUBLIC COMMENT ON AGENDA ITEMS**

John LaPietra of 386 Boyer Court asked Council to take into consideration moving the Public Comment on Agenda Items before the approval of the Consent Agenda.

**PUBLIC HEARINGS & SUBSEQUENT COUNCIL ACTION**

**A. Public Hearing – Adoption of the Six Year Capital Improvement Program for July 1, 2011 through June 30, 2017:**

Mayor Dyer opened the public hearing to hear comment of the adoption of the Six Year Capital Improvement Program for July 1, 2011 through June 30, 2017.

John LaPietra of 386 Boyer Court asked for a brief overview of the program.

Hearing no further comment the hearing was closed.

**Moved** Williams, supported Metzger, to adopt the proposed Capital Improvement Program for July 1, 2011 through June 30, 2017. On a roll call vote – ayes: Mayor Dyer, Mankerian, Metzger, Miller, Traver, Williams, and Booton; nays: none. **MOTION CARRIED.**

**OLD BUSINESS**

**A. Firekeeper’s Casino Local Revenue Sharing Board Appointments:**

**Moved** Miller, supported Metzger, to reaffirm the appointment of Mayor Jim Dyer to the Firekeeper’s Casino Local Revenue Sharing Board and the appointment of City Attorney Paul Beardslee as the first alternate and City Manager Tom Tarkiewicz and the second alternate. On a voice vote – **MOTION CARRIED.**

**CITY OF MARSHALL, MICHIGAN  
RESOLUTION #2011-03**

**RESOLUTION APPOINTING REPRESENTATIVE AND ALTERNATES TO THE  
LOCAL REVENUE SHARING BOARD**

WHEREAS, the Urban Cooperation Act of 1967 (MCL 124.501 et seq., as amended: hereinafter the “Urban Cooperation Act”) provides that Public agencies of the State of Michigan and Public agencies of the United States may enter into interlocal agreements to exercise jointly with each other any power, privilege or authority that the agencies share in common and that each may exercise separately; and

WHEREAS, under subsection 2(e) of the Urban Cooperation Act (MCL 124.502(e)), Calhoun County, Emmett Charter Township, the City of Battle Creek, the City of Marshall, and Athens Township are Public agencies of the State of Michigan, each of which have the authority to enter into an interlocal agreement; and

WHEREAS, for purposes of the Urban Cooperation Act, the Nottawaseppi Huron Band of the Potawatomi Indians (hereinafter “the Tribe”) is treated as a

Public agency of the United States with the authority to enter into an interlocal agreement; and

WHEREAS, in accordance with the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.; hereinafter referred to as "IGRA"), on December 3, 1998 the State of Michigan and the Tribe made and entered into a Compact providing for the conduct of casino gaming, as approved by the U.S. Secretary of the Interior by publication in the Federal Register on February 18, 1999 (64 Fed. Reg. 8111), and as amended on July 23, 2009 in accordance with Section 16 of the Compact and approved by the U.S. Secretary of the Interior by publication in the Federal Register on October 8, 2009, (74 Fed. Reg. 51875) (hereinafter collectively referred to as the "Compact"); and

WHEREAS, the Tribe, a federally-recognized Indian tribe, acting under its governmental authority in accordance with IGRA and the Compact, commenced casino gaming operations on August 1, 2009, at the Firekeepers Casino (hereinafter the "Casino") on land located in Emmett Township, Michigan that is held in trust for the Nottawaseppi Huron Band by the United States; and

WHEREAS, growth and development on and in the vicinity of the Pine Creek Indian Reservation, which is the governmental and community center of the Tribe, will have impacts on Athens Township, which will be affected by the Tribe's operation of the Casino; and

WHEREAS, the Compact provides that the local units of government that are in the immediate vicinity or are otherwise directly affected by the Casino, together with the local government(s) affected by growth and development of the Tribe's governmental and community facilities on and in the immediate vicinity of the Pine Creek Reservation that will result from the operation of the Casino, may, at their option, form a Local Revenue Sharing Board in conjunction with the Tribe for the purpose of receiving and directing the disbursement of revenue sharing payments required by the Compact; and

WHEREAS, by entering into this interlocal agreement (hereinafter this "Agreement"), the parties hereto seek to create a Local Revenue Sharing Board, consistent with the terms and provisions of the Compact and for the purposes stated therein; and

WHEREAS, the Local revenue Sharing Board bylaws allow the appointment of a Board representative and Board alternates.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the City of Marshall appoints James L. Dyer, as the representative, City Attorney Paul Beardslee, as the first alternate and City Manager Tom Tarkiewicz, as the second alternate to

the Local Revenue Sharing Board in the absence of the representative.

Motion by Council member Miller, supported by Council Member Metzger.

AYES, Council members: Booton, Mayor Dyer, Mankerian, Metzger, Miller, Traver and Williams.

NAYES, Council members: None.

ABSTAIN, Council members: None.

RESOLUTION DECLARED ADOPTED.

#### CERTIFICATE

The foregoing is a true and a complete copy of the resolution adopted by the City Council and the City of Marshall at a regular meeting on January 18, 2011. Public notice was given and the meeting was conducted in full compliance with the Michigan Open Meetings Act (PA 267, 1976, as amended). Minutes of the meeting will be available as required by the Act.

City of Marshall

\_\_\_\_\_  
By: Sandra Bird  
Its: Clerk

Date: \_\_\_\_\_

#### **B. Chapter 120: Temporary Businesses:**

**Moved** Williams, supported Metzger, to approve the creation of Chapter 120: Temporary Businesses to the Marshall City Code On a roll call vote – ayes: Mankerian, Metzger, Miller, Traver, Williams, Booton and Mayor Dyer; nays: none. **MOTION CARRIED.**

**CITY OF MARSHALL  
ORDINANCE #2011-03**

AN ORDINANCE TO CREATE CITY OF MARSHALL CODE, CHAPTER 120:  
TEMPORARY BUSINESSES.

THE CITY OF MARSHALL ORDAINS:

**Section 1.** That **Chapter 120: Temporary Businesses** of the Marshall City Code, is hereby created and will read as follows:

**CHAPTER 120: Temporary Businesses**

- 120.01 Purpose
- 120.02 Definitions
- 120.03 License required
- 120.04 Application for license
- 120.05 Fees required
- 120.06 Exemptions
- 120.07 Application and Conditions; notice of denial
- 120.08 Expiration of license
- 120.09 Revocation of license; appeal
- 120.10 Display of license
- 120.11 Location
- 120.12 Restrictions on operations of temporary businesses
- 120.13 Enforcement
- 120.14 Relationship to other ordinances

**§ 120.01 PURPOSE.**

The purpose of this chapter shall be to protect the health, safety and welfare of citizens, as well as promote fairness to permanent businesses located within the city, through regulation of temporary businesses.

**§ 120.02 DEFINITIONS.**

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

***PERMANENT BUSINESS.*** Any profession, trade, occupation, shop, store

and any other kind of calling carried on in a building that is subject to Marshall City taxes on the subject lot or business.

**TEMPORARY BUSINESS.** Any profession, trade, occupation, shop, store and every other kind of calling carried on at a lot or business within the city, the instrumentalities of which are not subject to Marshall City taxes.

**§ 120.03 LICENSE REQUIRED.**

Temporary businesses shall not operate within the city without first obtaining a license in compliance with the provisions of this chapter. Permanent Businesses are exempt.

**§ 120.04 APPLICATION FOR LICENSE.**

Persons required to obtain a license shall apply for it at the office of the City Clerk. The content of the application form shall be prescribed by §120.07.

**§ 120.05 FEES REQUIRED.**

A license fee, set by resolution of the City Council, shall be paid in full prior to issuance of the license.

**§ 120.06 EXEMPTIONS.**

(A) The following persons and entities shall not be required to obtain licenses as specified herein and shall not be required to pay the fees prescribed herein: Duly authorized solicitors on behalf of any religious organization and entities which qualify or could qualify as tax-exempt organizations by the United States Internal Revenue Service. The City Clerk shall make the final determination regarding exemptions. Exempt persons or organizations shall be required to register with the City Clerk for identification purposes when engaging in any activity regulated by this chapter.

**§ 120.07 APPLICATION AND CONDITIONS; NOTICE OF DENIAL.**

(A) The applicant shall provide the following information to the City Clerk:

1. Applicant's name, location of business, home address, social security number and preferred telephone number.
2. A description of the type of business operation the applicant will conduct, including hours of operation.
3. Name and social security number of each employee, agent, or independent contractor working on behalf of the proposed business within the City.
4. A description of the goods, wares, merchandise or services the applicant will offer for sale.

5. Written permission from the owner of the business location, acknowledging responsibility for the care and custody of the property from/on which the business will operate.
6. Address of the applicant's most recent place of business.
7. Issuance of City license does not absolve applicant of responsibility to obtain all applicable county, state and federal licensing.

(B) Upon the receipt of application, the City Clerk will issue a notice of review for:

1. Approval of a criminal background check by the Police Department.
2. Approval by the Planning & Zoning Department with respect to compliance with the City's Zoning and Sign ordinances.
3. Approval through the City Engineers office with respect to the use of streets, sidewalks, and right-of-ways.
4. Approval by the Building Official with respect to the safety and compliance of any structures being used.
5. Approval by the Fire Department with respect to compliance with Fire Code.

(C) The City Clerk shall keep a full record in his or her office of all licenses issued, approvals given, and shall submit a copy of the record to the Chief of Police. Within ten working days of receipt of an application, the City Clerk shall either issue to the applicant the requested license or issue a written notice of denial and the reason therefor. The person whose license has been denied shall have the right to file an appeal to the City Council within ten days of the denial.

#### **§ 120.08 EXPIRATION OF LICENSE.**

All licenses issued under the provisions of this chapter shall expire within ten, thirty, sixty or ninety days of issuance. No business may be issued a license for more than ninety days in a twelve month period. All evidence of Temporary Business shall be removed at the end of permitted time period.

#### **§ 120.09 REVOCATION OR DENIAL OF LICENSE; APPEAL.**

(A) The licenses issued pursuant to this chapter may be revoked at any time by the City Clerk or the Chief of Police, or their duly authorized representatives, for any of the following reasons:

- (1) Any fraud, misrepresentation or false statement contained in the application for license;

(2) Any fraud, misrepresentation or false statement contained in connection with the selling of goods, wares, merchandise or services;

(3) Any violation of a city ordinance, including the city zoning code and the city sign code;

(4) Conviction of the applicant or other persons acting under the authority of the applicant's license for any felony or of a misdemeanor conviction involving moral turpitude within the preceding five years.

(5) Conducting the business permitted under this chapter in an unlawful manner or in such a manner as to constitute a breach of the peace, nuisance or a menace to the health, safety or general welfare of the public.

(B) Within three working days of the revocation of a license, the City Clerk shall send to the person whose license has been revoked, notice specifically setting forth the grounds of the revocation. The notice shall be mailed to the person to whom the license was issued at the address shown on the license application.

(C) The person whose license has been revoked shall have the right to file an appeal to the City Council within ten days of the revocation.

#### **§ 120.10 DISPLAY OF LICENSE.**

Any person or business licensed under the provisions of this chapter shall have the license issued to him or her in his or her immediate possession and shall display the same at the place of business.

#### **§ 120.11 LOCATION.**

Temporary businesses shall comply with the following location requirements:

(A) Temporary stands or businesses are allowed, with owner permission and license approval on all non-residential, taxable parcels for a period of up to 90 days per calendar year. The Temporary Business must be a permitted use in the district in which it is locating.

(B) Stands or businesses must meet the following requirements:

(1) Structures must not be less than sixteen feet from the face of each curb abutting a street.

(2) Structures must provide not less than six feet clearance on all public walks or pedestrian ways.

(C) When located on public property other than the public rights-of-way, the stands or businesses shall be permitted at the discretion of the City Manager under the policy guidance of the City Council. The City Council may, by

ordinance or resolution, establish such additional programs or requirements it deems fit for the operation on public property of any business regulated by this chapter.

**§ 120.12 RESTRICTIONS ON OPERATIONS OF TEMPORARY BUSINESSES.**

(A) The City Manager, City Clerk or Chief of Police may place such reasonable restrictions upon the location, hours, provisions for parking, ingress or egress or methods of operation of any temporary business licensed under this chapter, as deemed necessary to protect the general public health, safety or welfare. The restrictions may be imposed, modified or withdrawn at the time of licensure or any point thereafter.

(B) The City Council may, by resolution, establish general policies and guidelines, in addition to the provisions of this chapter, governing the location, hours or methods of operation of temporary business. Any such resolution shall not have the effect of invalidating any license already issued.

**§ 120.13 ENFORCEMENT.**

The Chief of Police and the City Clerk and their duly authorized representatives shall have the authority to examine all places of business and persons within the city, subject to the provisions of this chapter, to determine if this chapter has been complied with and to enforce the provisions of this chapter against any person found to be violating same.

**§ 120.14 RELATIONSHIP TO OTHER ORDINANCES.**

The terms of this chapter shall in no manner alter the interpretation or requirements of any other chapter of the City Code, whether the person is licensed or exempt under this ordinance shall comply with all applicable provisions of the city's Zoning, Sign and Building Codes. The City Clerk may require evidence of compliance with the codes prior to issuing a license.

**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 18th day of January, 2011.

---

James L Dyer, 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 January 18, 2011, 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. Special Land Use #SLU10.03 for Estilo Activity Center at 143 W. Michigan Avenue:**

**Moved** Miller, supported Williams, to approve Special Land Use Permit #SLU10.03 to allow an indoor recreational use at 143 W. Michigan Avenue. On a roll call vote – ayes: Metzger, Miller, Traver, Williams, Booton, Mayor Dyer, and Mankerian; nays: none. **MOTION CARRIED.**

#### **B. Special Land Use #SLU10.04 for Quality Excavating at 817 Industrial Road:**

**Moved** Williams, supported Metzger, to approve Special Land Use Permit #SLU 10.04 to allow an outdoor storage (storage) at 817 Industrial Road. On a roll call vote – ayes: Miller, Traver, Williams, Booton, Mayor Dyer, Mankerian, and Metzger; nays: none. **MOTION CARRIED.**

#### **C. Set Public Hearing – Chapter 152: Sign Ordinance:**

**Moved** Metzger, supported Williams, to schedule a public hearing for February 7, 2011 to hear public comment on the proposed changes to Chapter 152: Sign Ordinance. On a voice vote - **MOTION CARRIED.**

#### **D. Tax Collection Fee:**

**Moved** Williams, supported Metzger, to authorize staff to bill the schools for reimbursement of tax collection costs beginning FY 2012. On a roll call vote – ayes: Traver, Williams, Booton, Mayor Dyer, Mankerian, Metzger, and Miller; nays: none. **MOTION CARRIED.**

**E. Set Public Hearing – Chapter 154: Flood Prevention and Protection:**

**Moved** Metzger, supported Williams, to schedule a public hearing for February 7, 2011 to hear public comment on the proposed text changes to Chapter 154: Flood Prevention and Protection. On a voice vote – **MOTION CARRIED.**

**F. Proposed License Fees for Chapter 120: Temporary Businesses:**

**Moved** Williams, supported Mankerian, to approve the graduated fees for the licensing of Temporary Businesses as permitted in §120.05: Fees Required of Chapter 120: Temporary Businesses. On a roll call vote – ayes: Williams, Booton, Mayor Dyer, Mankerian, Metzger, Miller, and Traver; nays: none. **MOTION CARRIED.**

**CITY OF MARSHALL  
RESOLUTION #2011-04**

WHEREAS, Chapter 120, Section 120.05 of the Marshall City Code provides that a license fee for Temporary Business licenses shall be set by Resolution of the Marshall City Council.

THEREFORE, BE IT RESOLVED that the City Council of the City of Marshall hereby adopts the following graduated fee schedule to become effective immediately:

1-10 consecutive days license	\$50.00
Less than 30 consecutive days license	\$120.00
Less than 60 consecutive days license	\$150.00
Up to 90 consecutive days license	\$200.00

Adopted and signed this 18<sup>TH</sup> day of January, 2011.

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 January 18, 2011, 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

**APPOINTMENTS / ELECTIONS**

**A. Downtown Development Authority Appointments:**

**Moved** Williams, supported Metzger, to approve the appointment of Eldon Vincent and Janet Ostrum to the DDA Board for terms expiring December 31, 2014. On a voice vote – **MOTION CARRIED.**

**B. Library Board Appointment:**

**Moved** Miller, supported Metzger, to approve the appointment of Matthew Rogers to the Library Board with a term expiring March 31, 2013. On a voice vote – **MOTION CARRIED.**

**PUBLIC COMMENT ON AGENDA ITEMS**

John LaPietra of 386 Boyer Court spoke of his recent absence from council meetings.

**COUNCIL AND MANAGER COMMUNICATIONS**

None.

**ADJOURNMENT**

The meeting was adjourned at 8:11 p.m.

\_\_\_\_\_  
James L. Dyer, Mayor

\_\_\_\_\_  
Sandra Bird, Clerk-Treasurer