

CALL TO ORDER

IN REGULAR SESSION Tuesday, September 6, 2011 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 Dyer.

ROLL CALL

Roll was called:

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

Also Present: City Manager Tarkiewicz.

Absent: Council Members Booton and Mankerian.

Moved Williams, supported Miller, to excuse the absence of Council Members Booton and Mankerian. On a voice vote – **MOTION CARRIED.**

INVOCATION/PLEDGE OF ALLEGIANCE

Mike Donahue of Four Winds Christian Fellowship 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 removal of item 11A – Parking Ordinance. On a voice vote: **MOTION CARRIED.**

PUBLIC COMMENT ON AGENDA ITEMS

Jack Reed of 116 S. Sycamore announced his interest in the vacancy of the Fourth Ward Council seat.

CONSENT AGENDA

Moved Metzger, supported Williams, to approve the consent agenda:

- A. Schedule a public hearing for September 19, 2011 to hear public comment on the proposed application for an Industrial Facilities Tax Exemption Certificate for Tenneco Marshall;
- B. Schedule a public hearing for September 19, 2011 to hear public comment on the proposed application for an Industrial Facilities Tax Exemption certificate for Michigan Kitchen Distributors;
- C. Approve the recommendation to enter into negotiations with Revitalize, LLC to serve as Third Party Administrator for a Rental Rehabilitation Program grant through the Michigan State Housing Development Authority and authorize the Clerk-Treasurer to

- execute and sign a Third Party Administrator Agreement upon conclusion of successful negotiations;
- D. Accept the proposal from Stantec Consulting for the design of the 2012 Water Main Infrastructure Upgrade for the not to exceed cost of \$29,500 and approve the resolution stating intent to reimburse expenditures from the bond proceeds for the improvement to the water distribution facilities;
 - E. Accept the low bid from Quality Asphalt of Homer, MI for the amount of \$65,595 for the North Sycamore Street Rehabilitation project;
 - F. Approve the request from the Marshall Lions Club to hold their Annual Candy Day Sales on Friday, September 16 and Saturday, September 17, 2011;
 - G. Approve minutes of the City Council Regular Session and Work Session held on Monday, August 15, 2011;
 - H. Approve city bills in the amount of \$1,246,151.05.

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

PRESENTATIONS AND RECOGNITIONS

None.

INFORMATIONAL ITEMS

None.

PUBLIC HEARINGS & SUBSEQUENT COUNCIL ACTION

A. Public Hearing – Medical Marihuana Ordinance:

City Attorney Beardslee provided some background on the ordinance and some cases involving the Michigan Court of Appeals.

Mayor Dyer opened the public hearing to hear public comment regarding the proposed Medical Marihuana Ordinance.

John LaPietra of 386 Boyer Court inquired if the cases that are being heard by the Court of Appeals will be going to the Supreme Court.

Hearing no further comment the public hearing was closed.

Moved Miller, supported Metzger, to approve the adoption of the Medical Marihuana Ordinance for the City of Marshall. On a roll call vote – ayes: Metzger, Miller, Williams, and Mayor Dyer; nays: none. **MOTION CARRIED.**

**CITY OF MARSHALL, MICHIGAN
ORDINANCE #2011-12**

MEDICAL MARIHUANA ORDINANCE

**AN ORDINANCE PROHIBITING THE OPERATION OF A MEDICAL
MARIHUANA DISPENSARY IN THE CITY OF MARSHALL, MICHIGAN.**

THE CITY OF MARSHALL ORDAINS:

137.20 Findings.

The City of Marshall adopts this Ordinance based on the following findings of fact:

- A. In November, 2008 the people of the State of Michigan adopted an initiative which lead to the enactment of the Michigan Medical Marihuana Act (MMMA) at MCL 333.26421 *et. seq.*
- B. The MMMA creates a procedure by which a “qualifying patient” may obtain a certification from a physician and a “registry identification card” from the State Department of Community Health which prohibit prosecution and other penalties for cultivating a limited number of marihuana plants.
- C. The MMMA also authorizes a “primary caregiver” to obtain a “registry identification card” authorizing such person to lawfully cultivate and distribute marihuana to a limited number of “qualifying patients”.
- D. Notwithstanding all of the above, Michigan law continues to make the manufacture, possession and use of marihuana serious criminal offenses. Michigan’s Public Health Code provides penalties ranging from a misdemeanor for possession of a small amount of marijuana to life imprisonment for “habitual” manufacturers and distributors.
- E. Likewise, the Federal Controlled Substances Act (21 USC 801 *et. seq.*) makes the following unlawful:

The manufacture, distribution or possession with intent to distribute marihuana;

The leasing, renting, maintaining or using of property for the manufacturing, storing or distributing of controlled substances;

The distribution or manufacture of marihuana within 1,000 feet of schools and playgrounds, and within 100 feet of youth centers or video arcade facilities.

The use of any communication device to commit a felony violation of the Controlled Substances Act

- F. As of the time of the adoption of this Ordinance, (August, 2011) the interpretation of the MMMA is unsettled. Various trial courts throughout Michigan have addressed questions regarding the interpretation of the MMMA and its' application. The MMMA has been addressed in only five reported decisions from the Court of Appeals and no decisions of the Michigan Supreme Court. Further, the Michigan legislature has not acted to clarify the state of the law.
- G. The MMMA defines the "Medical use" of marihuana as "the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition". (MCL 333.24623(e)) This definition does not include the sale of marihuana as a Medical use.
- H. The MMMA provides "(a) registered primary caregiver may receive *compensation for costs* associated with assisting a registered patient in the medical use of marihuana. Any such compensation shall not constitute the sale of controlled substances". (MCL 333.24624(e)) Emphasis added.
- I. The drafters of the initiative adopted by voters in 2008 did not intend to authorize cooperative marihuana growing operations or dispensaries. See People v. Redden, 290 Mich. App. 65 (2010), citing Satyanarayana, Is Marijuana Good Medicine? Detroit Free Press, October 25, 2008, <http://www.freep.com/article/20081025/NEWS15/810250341/Is-marijuana-good-medicine-> (accessed August 8, 2011).

137.21: Purpose.

It is the purpose of this Ordinance to regulate the conduct of activity pursuant to the Michigan Medical Marihuana Act (“MMMA”) MCL 333.26421 *et. seq.*, and to regulate the conduct of activity pursuant thereto in the City of Marshall, Michigan so as to protect the health, safety and welfare of the general public. This ordinance shall be interpreted with reference to the changing state of the law as it relates to the MMMA in Michigan; it is not the intent of the Marshall City Council to authorize any person to engage in any activity that is otherwise prohibited by state or federal law, nor, except as expressly provided herein, is it the intent of the Marshall City Council to prohibit conduct allowed under the MMMA.

137.22 Definitions.

Any term used in this Ordinance which is defined in the Michigan Medical Marihuana Act (MCL 333.26421 *et. seq.*) shall have the meaning given it by the Michigan Medical Marihuana Act.

- A. **“Lot of Record”** – a lot, the dimension and configuration of which are shown on a map recorded in the office of the County Register of Deeds, or a lot or parcel described by metes and bounds, the accuracy of which is attested to by a professional engineer or land surveyor (registered and licensed in the state and likewise recorded on a file with the county.)
- B. **“Marihuana Dispensary”**. – a use of a lot of record by more than two individuals for the acquisition, possession, cultivation, manufacture, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient’s debilitating medical condition or symptoms associated with the debilitating medical condition.

137.23 Dispensaries prohibited.

The use of any lot of record as a Marihuana Dispensary is prohibited.

137.24 Severability.

If sections of this ordinance shall be deemed to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

137.25 Penalty.

Notwithstanding the provisions of Section 137.99, any person, firm, or corporation in violation of any provisions of this Ordinance shall be deemed responsible of violating a municipal civil infraction and shall, upon finding thereof, be subject to a fine of not more than One Hundred and 00/100 (\$100.00) Dollars, plus Court costs and the cost of prosecution not to exceed Five Hundred and 00/100 (\$500.00) Dollars. Each day that a violation occurs shall be considered a separate offense. The City of Marshall may, in addition, seek injunctive relief.

Effective Date.

This Ordinance shall become effective upon its publication in a newspaper of general circulation in Marshall, Michigan.

Adopted by the City Council of the City of Marshall, Michigan on the 6th day of September, 2011.

OLD BUSINESS

None.

REPORTS AND RECOMMENDATIONS

A. Bid Award – Liability and Property Insurance:

Moved Williams, supported Metzger, to accept the bid from Hub International Midwest, Ltd. of Battle Creek, MI for the amount of \$192,123 for a term of three consecutive years beginning with the policy period of November 1, 2011 and ending October 31, 2014, with two one-year renewals. On a roll call vote – ayes: Miller, Williams, and Metzger; nays: Mayor Dyer. **MOTION CARRIED.**

B. Joseph Campbell IFT Clawback:

Moved Miller, supported Williams, to adopt the resolution calling for the revocation of the IFT certificates issued to Campbell Soup Company for real and personal property improvements and 100% tax recapture for both real and personal property. On a roll call vote – ayes: Williams, Mayor Dyer, Metzger, and Miller; nays: none. **MOTION CARRIED.**

**CITY OF MARSHALL, MICHIGAN
RESOLUTION #2011- 35**

WHEREAS, Joseph Campbell Company, pursuant to Public Act 198 of 1974, properly applied for and was issued the following Industrial Facilities Tax (IFT) Exemption Certificates for real and personal property improvements which is presently in effect and which expires by the following due dates; and

Parcel # 500-097-01	Certificate #03-581	Expires 12/30/2016
Parcel # 500-097-00	Certificate #03-581	Expires 12/30/2016
Parcel # 500-101-01	Certificate #06-196	Expires 12/30/2018
Parcel # 500-106-01	Certificate #2009-239	Expires 12/30/2021
Parcel # 500-093-01	Certificate #03-172	Expires 12/30/2013

WHEREAS, Campbell Soup Company, successor to Joseph Campbell Company, has given notice that it intends to permanently close the facility referred to in the IFT exemption certificate; and

WHEREAS, Letters of Agreement were signed for the aforementioned IFT exemption certificate, and

WHEREAS, pursuant to the Letters of Agreement the governing body of the City of Marshall has the right to recapture from the company up to and including the total amount of taxes abated by the IFT exemption certificate; and

WHEREAS, Campbell Soup Company has been notified of this proposed action and has been given an opportunity to be heard.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the city that:

1. Industrial Facilities Exemption Certificates #03-581, #06-196, #2009-239, and #03-172 issued for real and personal property improvements and due to expire December 30, 2016, December 30, 2018, December 30, 2021, and December 30, 2013 respectively are hereby revoked and that such revocation shall take effect in the 2012 assessing/tax year.
2. Campbell Soup Company is hereby ordered to repay 100% of the abated taxes for IFT Certificates #03-581, #06-196, #2009-239, and #03-172 for the tax years 2004 through and including 2011 and such repayment of taxes shall be made on or before January 31, 2012.

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 a resolution adopted by the City Council, City of Marshall, County of Calhoun, State of Michigan, at a regular meeting held on September 6, 2011 and that said meeting was conducted and that the minutes of said meeting were kept and will be or have been made available.

Sandra Bird, CLERK-TREASURER

C. Mainstreet Recommendation:

Moved Metzger, supported Williams to the Mayor's recommendation to continue in the Michigan Main Street Program through the end of 2012 and the recommendation to transfer supervision of the Main Street Manager from the Main Street Board to the City Manager. On a roll call vote – ayes: Metzger, Miller, Williams, and Mayor Dyer; nays: None. **MOTION CARRIED.**

D. Lake Allegan/Kalamazoo River Watershed Cooperative Agreement:

Moved Miller, supported Metzger to authorize the Clerk-Treasurer to sign the Lake Allegan/Kalamazoo River Watershed Cooperative Agreement for the reduction of phosphorus loading. On a voice vote – **MOTION CARRIED.**

APPOINTMENTS / ELECTIONS

A. Airport Board Appointments:

Moved Williams, supported Metzger, to approve the appointment of Morris Arvoy to the Airport Board and the reappointment of Desmond Kirkland with terms expiring October 1, 2014. On a voice vote – **MOTION CARRIED.**

B. City Council Vacancy – Ward 4:

Moved Miller, supported Metzger, to proceed with the filling of the vacant City Council seat by accepting applications and letters of interest until Wednesday, September 14, 2011 at 3:00 p.m. and take action at the next City Council Meeting on September 19, 2011. On a voice vote – **MOTION CARRIED.**

PUBLIC COMMENT ON NON-AGENDA ITEMS

John LaPietra of 386 Boyer Court made a suggestion that the letter of interest for the City Council seat be included in the next Council packet for public

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information.

COUNCIL AND MANAGER COMMUNICATIONS

None.

ADJOURNMENT

The meeting was adjourned at 8:27 p.m.

James L. Dyer, Mayor

Sandra Bird, Clerk-Treasurer