

**CALL TO ORDER**

IN REGULAR SESSION Monday, September 17, 2012 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: Booton, Mayor Dyer, Mankerian, Metzger, Miller, Reed and Williams.

Also Present: City Manager Tarkiewicz.

Absent: None.

**INVOCATION/PLEDGE OF ALLEGIANCE**

David Good of the First Baptist Church gave the invocation and Mayor Dyer led the Pledge of Allegiance.

**APPROVAL OF THE AGENDA**

**Moved** Metzger, supported Reed to approve the agenda with removal of item 7A Schedule Public Hearing - Autocam Corporation IFT and the addition of the MSCPA invoice in the amount of \$797,946.33. On a voice vote – **MOTION CARRIED.**

**PUBLIC COMMENT ON AGENDA ITEMS**

None.

**CONSENT AGENDA**

**Moved** Metzger, supported Mankerian to amend the Minutes from Tuesday, September 4, 2012 to reflect the change to Amendment #5 to read “City Council recommends that the Planning Commission consider allowing a significant additional height for development to encourage growth in the area of Prospect Street.” On a voice vote – **MOTION CARRIED.**

**Moved** Williams, supported Metzger:

- A. Authorize the purchase of one batch (73 drums) of P-86 Polymer from Chemco Products, Inc in the amount of \$65,700;
- B. Approve one year licenses for amusement devices and music machines for various businesses in the City of Marshall;
- C. Approve minutes of the City Council Regular Session held on Tuesday, September 4, 2012;
- D. Approve city bills in the amount of \$2,776,907.50.

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

**PRESENTATIONS AND RECOGNITIONS**

None.

**INFORMATIONAL ITEMS**

None.

**PUBLIC HEARINGS & SUBSEQUENT COUNCIL ACTION**

None.

**OLD BUSINESS**

**Moved** Miller, supported Mankerian to bring back to Council on Monday, December 3, 2012 the two tabled motions to approve the HCOD District as presented by the HNC with the amendments and the formation of an Oaklawn Land Use Committee. On a voice vote – **MOTION CARRIED.**

Council Member Williams ~~recused himself from voting~~ was excused from voting on this question by action of the Council on June 18, 2012, related to the overall issue of the Hospital Neighborhood Committee recommendations to the Council.

Steve Rhodes of 612 Hill Road commented regarding Council Member Williams comments at the September 4, 2012 City Council Meeting and formally filed a Conflict of Interest complaint against the Council Member Williams and Mayor Dyer:

September 16, 2012

Tom Tarkiewicz, City Manager  
Town Hall  
323 W. Michigan Ave.  
Marshall, MI 49068

Dear Mr. Tarkiewicz,

With this letter I am filing a signed written complaint against Council Member Brent Williams for violating the City of Marshall's Conflict of Interest Policy.

On June 18, 2012, as per the City of Marshall's Conflict of Interest Policy, Council Member Williams delivered a written statement to the Council disclosing his conflict of interest regarding issues related to the Hospital Campus Overlay District (HCOD) and explaining why, despite the fact that his spouse is the current president of the hospital and the incoming CEO, he

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would be able to participate in discussion prior to the vote related to the HCOD fairly, objectively and in the public interest.

At that same Council meeting the Council voted unanimously to “*excuse Council Member Williams from voting on the Hospital Campus Overlay District because of Conflict of Interest.*” Subsequently in that same meeting, the Council voted 4 to 1 in favor of allowing Council Member Williams to “*participate in the Hospital Campus Overlay District discussion prior to the vote.*”

Although I believe the Council’s Conflict of Interest Policy is flawed, Council Member Williams and the Council acted in accordance with the existing policy.

However, at a Council meeting on the evening of September 4, 2012, following public input and just prior to the Council taking up discussion that would lead to voting on motions related to the HCOD, Council Member Williams made a public statement in which he stated that “*From this point on of the actual deliberations and the vote, I will not participate. I will be recused from the vote of the Council.*” He followed this statement by proceeding to say, “*But, I want to make a few comments and observations that I’ve seen....*”

He was then allowed to speak for fifteen-plus minutes during which time he repeatedly made statements that, in my professional opinion, had the appearance of stating directly and indirectly how he would vote if he had not recused himself and statements that had the appearance of being directed at his fellow council members with the intention of influencing their voting. In spite of repeatedly referring to his statements as “facts,” they were clearly statements intended to persuade.

My Ph.D. from The Pennsylvania State University is in Communication with a specialty focus on group processes. I have over thirty-five years of experience teaching and working with governing bodies and nonprofit organizations in the area of group decision-making processes, including parliamentary procedure. As noted above, up until Council Member Williams followed his brief statement in which he said “*I have recused myself from voting...*” with his lengthy persuasive statement, there was no violation of the existing policy. However, in my professional opinion, from the moment he said “*However, I want to make a few statements of fact and observation....*” he was in violation of the existing policy. Why do I say this?

When I objected with a point of order, Mayor Dyer indicated that Council Member Williams was making his “recusal statement.” There is nothing in the existing policy, or the vote taken by Council accepting Council Member Williams’s letter declaring a conflict of interest and excusing him from the vote, or anything in the subsequent vote allowing him to “*participate prior to the*

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*vote*” that allowed him to make any kind of “recusal statement.” The act of making such a statement as presented just prior to deliberation and voting, that in my professional opinion could directly or indirectly influence Council’s voting, violated existing policy.

Furthermore, even though Mayor Dyer subsequently referred to Council Member Williams’s statement as a “personal statement,” and defended his right to make such a statement, the content of what Council Member Williams said violated the very essence of, and ethical integrity of, what it means to recuse oneself -- an opinion shared by professional colleagues.

In sum, there is nothing in the Conflict of Interest Policy, or any of the votes taken regarding Council Member Williams’s recusal, that allowed for making any kind of “recusal statement” or “personal statement” just prior to deliberation and voting that had the appearance of an attempt to indirectly influence voting. Council Member Williams gave up that opportunity when he recused himself by stating *“From this point on of the actual deliberations and the vote, I will not participate. I will be recused from the vote of the Council.”*

Effective governance depends on decision-making by council members that is unbiased and that **appears** to be unbiased. Even the appearance of a conflict of interest can damage a council’s credibility and reputation and compromise its ability to make unbiased decisions. When we vote for our fellow citizen’s of Marshall to represent us, we place great trust in their behaviors as elected officials. We expect them to remain free from the influence of, or the **appearance of**, any conflicting interest in fulfilling their Council duties and we expect them to exercise great care that no detriment to the City and citizens of Marshall results from conflicts between their personal and/or professional interests and those of the City, its citizens, and the public good.

Sincerely,

Steven C. Rhodes, Ph.D.  
612 Hill Rd.  
Marshall, MI 49068

Professor Emeritus / Director Emeritus  
School of Communication  
Western Michigan University

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Tom Tarkiewicz, City Manager  
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323 W. Michigan Ave.  
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Dear Mr. Tarkiewicz,

With this letter I am filing a signed written complaint against Mayor James Dyer for violating the City of Marshall's Conflict of Interest Policy.

On June 18, 2012, as per the City of Marshall's Conflict of Interest Policy, Council Member Brent Williams delivered a written statement to the Council disclosing his conflict of interest regarding issues related to the Hospital Campus Overlay District (HCOD) and explaining why, despite the fact that his spouse is the current president of the hospital and the incoming CEO, he would be able to participate in making decisions related to the HCOD fairly, objectively and in the public interest.

At that same Council meeting the Council voted unanimously to *"excuse Council Member Williams from voting on the Hospital Campus Overlay District because of Conflict of Interest."* Subsequently in that same meeting, the Council voted 4 to 1 in favor of allowing Council Member Williams to *"participate in the Hospital Campus Overlay District discussion prior to the vote."*

Although I believe the Council's Conflict of Interest Policy is flawed, Council Member Williams, Mayor Dyer, and the Council acted in accordance with the existing policy.

However, at a Council meeting on the evening of September 4, 2012, following public input and just prior to the Council taking up discussion that would lead to voting on motions related to the HCOD, Council Member Williams made a public statement in which he stated that *"From this point on of the actual deliberations and the vote, I will not participate. I will be recused from the vote of the Council."* He followed this statement by proceeding to say, *"But, I want to make a few comments and observations...."*

Mayor Dyer then allowed Council Member Williams to speak for fifteen-plus minutes during which time, in my professional opinion, he repeatedly made statements that had the appearance of directly and indirectly stating how he would vote if he had not recused himself, and statements that were clearly being heard by his fellow council members. Therefore, he made statements that had the potential to influence voting. In spite of repeatedly referring to these statements as "facts," they were clearly statements intended to persuade.

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When I objected with a point of order, Mayor Dyer indicated that Council Member Williams was making his “recusal statement.” There is nothing in the existing policy, or the vote taken by Council accepting Council Member Williams’s letter declaring a conflict of interest and excusing him from the vote, or anything in the subsequent vote allowing him to “*participate prior to the vote*” that allowed him to make any kind of “recusal statement” just prior to deliberation and voting that, again in my professional opinion, could directly or indirectly influence Council’s voting.

In allowing Council Member Williams to make such global statements just prior to deliberation and voting, Mayor Dyer violated the existing Conflict of Interest Policy.

Furthermore, following Council Member Williams’s statement, which I and many others feel was in and of itself a violation of what it means to recuse oneself, Mayor Dyer indicated that Council Member Williams was making a “personal statement” directed at the public and not the other council members sitting in the room.

Specifically, Mayor Dyer stated: “*Council Member Williams was speaking to the public regarding his personal views on the subject knowing that he was not in a position to deliberate.*” There is nothing in the Conflict of Interest Policy, or any of the votes taken regarding Council Member Williams’s recusal, that allowed for making any kind of “personal statement” just prior to deliberation and voting. Council Member Williams gave up that opportunity when he recused himself, and Mayor Dyer admitted that when he said that he allowed Council Member Williams to speak because Council Member Williams knew that he was not in a position to deliberate.

Such statements by Mayor Dyer further indicate that he knew that what he was allowing violated the ethical integrity of recusal, and in this case, Council’s own Conflict of Interest Policy.

Effective governance depends on decision-making by council members that is unbiased and that **appears** to be unbiased. Even the appearance of a conflict of interest can damage a council’s credibility and reputation and compromise its ability to make unbiased decisions. When we vote for our fellow citizens of Marshall to represent us, we place great trust in their behaviors as elected officials. We expect them to remain free from the influence of, or the **appearance of**, any conflicting interest in fulfilling their Council duties and we expect them to exercise great care that no detriment to the City and citizens of Marshall results from conflicts between their personal and/or professional interests and those of the City, its citizens, and the public good.

Sincerely,

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Marshall, MI 49068

Professor Emeritus / Director Emeritus  
School of Communication  
Western Michigan University

### **REPORTS AND RECOMMENDATIONS**

#### **A. CDBG Downtown Signature Building Project:**

**Moved** Miller, supported Metzger to authorize the repayment of the CDBG Downtown Signature Building Project grant to the Michigan State Housing Development Authority in one payment in the amount of \$298,298. On a roll call vote – ayes: Mankerian, Metzger, Miller, Reed, Williams, Booton, and Mayor Dyer; nays: none. **MOTION CARRIED.**

### **APPOINTMENTS / ELECTIONS**

None.

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

Doug Jackson asked a question regarding the repayment amount for CDBG Downtown Signature Building Project grant.

### **COUNCIL AND MANAGER COMMUNICATIONS**

None.

### **ADJOURNMENT**

The meeting was adjourned at 7:28 p.m.

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James L. Dyer, Mayor

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Sandra Bird, Clerk-Treasurer