

CALL TO ORDER

IN REGULAR SESSION Monday, August 19, 2019 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 Caron.

ROLL CALL

Roll was called:

Present: Council Members: Mayor Caron, Gates, McNeil, Metzger, Traver, Underhill, and Wolfersberger.

Also Present: City Manager Tarkiewicz and Clerk Nelson.

Absent: None.

INVOCATION/PLEDGE OF ALLEGIANCE

Mayor Caron led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

Moved McNeil, supported Metzger, to approve the agenda as presented. On a voice vote – **MOTION CARRIED.**

PUBLIC COMMENT ON AGENDA ITEMS

Christina Geairn of 542 N. Gordon spoke regarding Traffic Control Order #109 and her suggestion to extend the order for the entire section of Gordon Street because of the traffic issues.

CONSENT AGENDA

Moved McNeil, supported Gates, to approve the Consent Agenda with the removal of Traffic Control Order 109 for parking on Gordon Street:

- A. Approve the lease extension with Griswold Aviation LLC for portions of the property at 1243 S. Kalamazoo Avenue;
- B. Approve the purchase of a new DART bus from Hoekstra Transportation in an amount not to exceed \$89,819.33 and increase the budget of line item 588-538-970.00 Capital Outlay by \$89,820;
- C. Approve Traffic Control Order 108 to approve NO PARKING, STANDING or STOPPING by allowed on the east side of Greenfield Street between Arms Street and Michigan Avenue;
- D. Minutes of the City Council Regular Session held on Monday, July 15, 2019;
- E. Approve city bills in the amount of \$ 2,569,862.33.

On a roll call vote – ayes: Gates, McNeil, Metzger, Traver, Underhill, Wolfersberger, and Mayor Caron; nays: none. **MOTION CARRIED.**

PRESENTATIONS AND RECOGNITION

A. State of Michigan Police Accreditation:

Michigan Association of Chiefs of Police (MACP) Executive Director Robert Stevenson, MACP Director of Professional Development Neal Rossow, MACP President Terrence McDonnell, and MACP Vice President Geoffrey Smith presented the Marshall Police Department with the certificate signifying the State of Michigan Law Enforcement accreditation.

B. Girl Scout Bat House Presentation:

Girl Scout Troop 80216 presented bat houses to the City and Fairgrounds that they constructed.

INFORMATIONAL ITEMS

None.

PUBLIC HEARINGS & SUBSEQUENT COUNCIL ACTION

A. Amendment to Ordinance 136.03, Tobacco Products, Vapor Products, Alternative Nicotine Products:

Attorney John Sullivan provided background regarding the changes to the Youth Tobacco Act of Michigan and incorporating those changes into the proposed amendments to Ordinance 136.03.

Mayor Caron opened the public hearing to hear public comment regarding the proposed amendment to Ordinance 136.03: Tobacco Products, Vapor Products, Alternative Nicotine Products.

Hearing no comment, the hearing was closed.

Moved Metzger, supported Underhill, to adopt the amendments to Ordinance 136.03: Tobacco Products, Vapor Products, Alternative Nicotine Products. On a roll call vote – ayes: McNeil, Metzger, Traver, Underhill, Wolfersberger, Mayor Caron, and Gates; nays: none. **MOTION CARRIED.**

City of Marshall, Michigan

Ordinance #2019-05

AN ORDINANCE AMENDING CITY OF MARSHALL CODE OF ORDINANCES,
SECTION 136.03

WHEREAS, on June 4, 2019, the State of Michigan enacted Public Act 17 and Public Act 18 of Public Acts of 2019, which amend the Youth Tobacco Act of Michigan, codified in MCL 722.641 et seq; and

WHEREAS, the amendments to the Youth Tobacco Act of Michigan necessitate corresponding amendments to Section 136.03 of the Marshall Code of Ordinances; and

WHEREAS, the public good is furthered by maintaining consistency and uniformity between the Act and local ordinance;

NOW, THEREFORE, THE CITY OF MARSHALL ORDAINS that the current version of Section 136.03 be deleted and replaced with the version set forth herein;

§ 136.03 TOBACCO PRODUCTS, VAPOR PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS,

(A) Definitions. As used in this section:

“TOBACCO PRODUCT” means a product that contains tobacco and is intended for human consumption, including, but not limited to, a cigarette, noncigarette smoking tobacco, or smokeless tobacco, as those terms are defined in section 2 of the tobacco products tax act, 1993 PA 327, MCL 205.422, as may be from time to time amended, and a cigar.

“VAPOR PRODUCT” means a noncombustible product that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine or any other substance, and the use or inhalation of which simulates smoking. Vapor product includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor cartridge or other container of nicotine or other substance in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar product or device. Vapor product does not include a product regulated as a drug or device by the United States Food and Drug Administration under 21 USC 351 to 360fff-7.

“ALTERNATIVE NICOTINE PRODUCT” means a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Alternative nicotine product does not include a tobacco product, vapor product, food, or a product regulated as a drug or device by the United States Food and Drug Administration under 21 USC 351 to 360fff-7.

“LIQUID NICOTINE” means a liquid or other substance containing nicotine in any concentration that is sold, marketed, or intended for use in a noncombustible product that employs a heating element, power source,

electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine or any other substance, and the use or inhalation of which simulates smoking.

“LIQUID NICOTINE CONTAINER” means a bottle or other container holding liquid nicotine in any concentration but does not include a cartridge containing liquid nicotine if the cartridge is prefilled and sealed by the manufacturer of the cartridge and is not intended to be opened by the consumer.

“MINOR” means an individual who is less than 18 years of age.

“PUBLIC PLACE” means a public street, sidewalk, park, any outside area open to the general public, any public conveyance or private vehicle located in an area open to the general public, or any area open to the general public in a publicly owned or operated building or public place of business. Public place shall also include the grounds of a public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12, in a school bus, or on the grounds of any correctional facility, including the juvenile detention facility or the property upon which the facility is located.

“USE A TOBACCO PRODUCT, VAPOR PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT” means to smoke, chew, suck, inhale, or otherwise consume a tobacco product, vapor product, or alternative nicotine.

“PERSON WHO SELLS TOBACCO PRODUCTS AT RETAIL” means a person whose ordinary course of business consists, in whole or part, of the retail sales of tobacco products subject to state sales tax.

“PERSON WHO SELLS VAPOR PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS AT RETAIL” means a person whose ordinary course of business consists, in whole or part, of the retail sales of vapor products or alternative nicotine products.

- (B) A person shall not sell, give, or furnish a tobacco product, vapor product, or alternative nicotine product to a minor, including, but not limited to, through a vending machine. This section does not apply to the handling or transportation of a tobacco product, vapor product, or alternative nicotine product by a minor under the terms of the minor’s employment.
- (C) Before selling, offering for sale, giving or furnishing a tobacco product, vapor product, or alternative nicotine product to an individual, a person shall verify that the individual is at least 18 years of age by doing 1 of the following:
- (1) If the individual appears to be under 27 years of age, examining a government-issued photographic identification that establishes that the individual is at least 18 years of age.

- (2) For sales made by the internet or other remote sales method, performing an age verification through an independent, third-party age verification service that compares information available from a commercially available data base, or aggregate of databases, that are regularly used by government agencies and businesses for the purpose of age and identity verification to the personal information entered by the individual during the ordering process that establishes that the individual is 18 years of age or older.
- (D) A person who violates subsections (B) or (C) is guilty of a misdemeanor punishable by a fine as follows:
 - (1) For a first offense, not more than \$100.00.
 - (2) For a second offense, not more than \$500.00
- (E) A person who sells tobacco products at retail shall not sell a cigarette separately from its package. This section does not apply to a person who sells tobacco products at retail in a tobacco specialty retail store or other retail store that deals exclusively in the sale of tobacco products and smoking paraphernalia. A person who violates this subsection is guilty of a misdemeanor, punishable by a fine of not more than \$500.00.
- (F) A person shall not sell a liquid nicotine container unless the liquid nicotine container meets the child-resistant effectiveness standards of 16 CFR 1700.15(b). A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$50.00 for each violation.
- (G) A person who sells vapor products or alternative nicotine products at retail shall not display for sale a vapor product unless the vapor product is stored for sale behind a counter in an area accessible only to employees or within a locked case. A person who violates this subsection is responsible for a municipal civil infraction and shall be fined not more than \$500.00.
- (H) A minor shall not do any of the following;
 - (1) Purchase or attempt to purchase a tobacco product.
 - (2) Possess or attempt to possess a tobacco product.
 - (3) Use a tobacco product in a public place.
 - (4) Present or offer to an individual a purported proof of age that is false, fraudulent, or not actually his or her own proof of age for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a tobacco product.
- (I) A minor who violates subsection (H) shall be punished as follows:

- a. For a first offense, the minor is guilty of a misdemeanor punishable by a fine of not more than \$50.00. The court may also require the minor to participate in a health and risk reduction assessment program and order up to 16 hours of community service.
 - b. For a second offense, the minor is guilty of a misdemeanor punishable by a fine of not more than \$50.00. The court may also require the minor to participate in a health and risk reduction assessment program and order up to 32 hours of community service.
 - c. For a third or subsequent offense, the minor is guilty of a misdemeanor punishable by a fine of not more than \$50.00. The court may also require the minor to participate in a health and risk reduction assessment program and order up to 48 hours of community service.
- (J) A minor shall not do any of the following:
- a. Purchase or attempt to purchase a vapor product or alternative nicotine product.
 - b. Possess or attempt to possess a vapor product or alternative nicotine product.
 - c. Use a vapor product or alternative nicotine product.
 - d. Present or offer to an individual a purported proof of age that is false, fraudulent, or not actually his or her own proof of age for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a vapor product or alternative nicotine product.
- (K) A minor who violates subsection (J) shall be punished as follows:
- a. For a first violation, the minor is responsible for a municipal civil infraction and shall be fined not more than \$50.00. The court may also order the minor to participate in a health and risk reduction program and perform up to 16 hours of community service.
 - b. For a second violation, the minor is responsible for a municipal civil infraction and shall be fined not more than \$50.00. The court may also order the minor to participate in a health and risk reduction program and perform up to 32 hours of community service.
 - c. For a third violation, the minor is guilty of a misdemeanor punishable by a fine of not more than \$50.00. The court may also order the minor to participate in a health and risk reduction program and perform up to 48 hours of community service.
- (L) Subsections (H) and (J) do not apply to the following:
- a. The handling or transportation of a tobacco product, vapor product or alternative nicotine product by a minor under the terms of the minor's employment.

- b. Undercover operations or compliance checks conducted in accordance with MCL 722.642(6)(a)-(c).
- c. A minor charged with violating sections (H) or (J) may be charged with, convicted of, or sentenced for any other violation of law arising out of the violation of section (E) or (G).

(Prior Code, § 18-119) (Ord. 98.4, passed 4-6-1998)

REPEALER

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect, and the City of Marshall City Code shall remain in full force and effect, amended only as specified above.

SEVERABILITY

If any section, clause or provision of this Ordinance shall be declared to be unconstitutional, void or illegal by any Court of competent jurisdiction, such section, clause or provision shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

ENACTMENT

This ordinance is declared to have been enacted by the City Council of the City of Marshall at a meeting called and held on the 19th day of August, 2019, and ordered to be given publication in the manner prescribed by law.

AYES: Mayor Caron, Gates, McNeil, Metzger, Traver, Underhill, and Wolfersberger.

NAYES:

ABSTENTIONS:

Mayor

STATE OF MICHIGAN
COUNTY OF CALHOUN

I, the undersigned, the qualified and acting City Clerk of the City of Marshall, Calhoun County, Michigan, do certify that the foregoing is a true and complete copy of the ordinance adopted by the City Council of the City of Marshall at a meeting called and held on the 19th day of August, 2019, the original of which is on file in my office.

Clerk

OLD BUSINESS

None.

REPORTS AND RECOMMENDATIONS

A. Cronin Millrace Pavilion and Confluence Garden Construction:

Moved Metzger, supported McNeil, to award the construction contract to the Kalleward Group for the construction of the Cronin Millrace Pavilion and Confluence Garden for the bid amount of \$558,000 with a contingency amount of \$34,751 totaling an amount not to exceed the available grant funds of \$592,751. On a roll call vote – ayes: Traver, Underhill, Wolfersberger, Mayor Caron, Gates, McNeil, and Metzger; nays: none. **MOTION CARRIED.**

B. Goal II. D. ELECTRIC VEHICLE CHARGING STATIONS:

City staff provided an update on the progress of researching electric vehicle charging stations. No action taken.

C. Goal Area III. G. SOLAR FIELD - Income Tax:

City staff provided an update on the research that was completed regarding an electric generation solar field. No action taken.

APPOINTMENTS/ELECTIONS

A. Northeast Neighborhood Improvement Authority Board:

Moved Wolfersberger, supported Metzger, to approve the appointment of Lucy Blair to the Northeast Neighborhood Improvement Authority Matt Davis to the Northeast Neighborhood Improvement Authority Board with a term expiring December 31, 2021. On a voice vote – **MOTION CARRIED.**

B. Brooks Nature Area Advisory Board:

Moved Metzger, supported Underhill, to approve the appointment of Scott VanderBerg to the Brooks Nature Area Advisory Board and reappoint Ben Lark to the Brooks Nature Area Advisory Board both with terms expiring August 15, 2022. On a voice vote – **MOTION CARRIED.**

C. Parks, Recreation, and Cemetery Board:

Moved Traver, supported Wolfersberger, to approve the reappointment of Mitch

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Robbins to the Parks, Recreation, and Cemetery Board with a term expiring July 1, 2022. On a voice vote – **MOTION CARRIED.**

PUBLIC COMMENT ON NON-AGENDA ITEMS

Jack Reed of 116 S. Sycamore spoke regarding the unveiling of a mural in Peace Park on Monday, September 16, 2019 at 6:00 p.m.

COUNCIL AND MANAGER COMMUNICATIONS

ADJOURNMENT

The meeting was adjourned at 8:25 p.m.

Joe Caron, Mayor

Trisha Nelson, City Clerk