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## CITY COUNCIL MINUTES

February 21, 2023  
Regular Meeting - 7:00 PM

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**1) CALL TO ORDER**

IN A REGULAR SESSIONS held on Tuesday, February 21, 2023 at 7:00 PM in the Board of Commission Chambers of the Marshall County Building, 315 West Green St, Marshall, MI 49068, the Marshall City Council was called to order by Mayor Schwatz.

**2) ROLL CALL**

Roll was called:

Present: Mayor Schwartz, Members Caron, Chaney-Huggett, Gates, Traver, Underhill, Wolfersberger

Also Present: Manager Perry and Clerk Eubank

Absent: None

**3) INVOCATION**

**4) PLEDGE OF ALLEGIANCE**

Mayor Schwartz led the Pledge of Allegiance.

**5) APPROVAL OF AGENDA** - Items can be added or deleted from the Agenda by City Council action.

**Moved** Joe Caron, supported Scott Wolfersberger to approve the agenda as presented. On a voice vote: **Motion carried.**

**6) PUBLIC COMMENT ON AGENDA AND NON-AGENDA ITEMS** - Persons addressing Council are required to give their name and address for the record when called upon by the Mayor. Members of the public shall be limited to speaking for a maximum of five (5) minutes on any agenda item.

Stephanie Fries of Dearborn and Ford Motor Company stated that Ford is excited to join the community with their planned \$3.5 Billion investment in a fully Ford-owned facility. She stated that Ford has heard the concerns of the citizens of the area and that Ford is working towards addressing them, including 245 acres of a natural conservation area and working with the state to preserve the historic barns on the property. She further stated that they are working on finding a date for a community engagement session in the near future, but questions or concerns could be e-mailed prior.

Josh Hunt of the MEDC stated that the purpose of the MEDC is to promote long-term growth in Michigan and that they hope to accomplish that with the new LFP battery plant that will be fully owned by Ford. They hope this will begin generational growth as well as bring millions of dollars into the community, all while being subject to strict state and federal regulations.

Glen Kowalske of Marshall Township stated that the 245 acres that Ford is offering is unusable land and that he feels that the government will be to blame for the destruction of the land. He further stated his opposition to the lack of discussion and transparency

with the residents.

Jim Durian of Mason stated that MAEDA is the local chamber of commerce, which has paid for various improvements over the years, including the new tree lights and benches downtown. He further stated that the new Ford facility will bring in new career opportunities that have been lost when other companies have moved away and will bring billions in capital investments to the area.

Barry Wayne Adams of 622 W Green stated that big companies will come in and replace all the small businesses. He further stated that money can not replace land and that we need food more than cars.

Rebecca Glotfelty of Charlevoix stated that the land in question is some of the best farm land in the county and that this would be an injustice to the area. She further stated that she liked Marshall better when there were fewer people and that she believes a park is needed to help heal society. A copy of a proposed park was added to the record

Carolyn Watson of the City of Marshall stated that hiking is a growing hobby and that a state park would rejuvenate Marshall. She stated that the area would be perfect for a park without destroying farms and that it would help small businesses without bringing in big businesses. A copy of her statement was added to the record.

Johanna Tewes of Fredonia Township stated that she moved to Marshall because of the historical charm and its safety. She fears her grandchildren won't be safe, nor will she be able to use her well water anymore as she won't be able to trust it. She would like more information to be shared with the citizens.

Jason Blanchard of 311 N Madison stated that the population follows 30 year cycles and that Marshall is due for a population increase. He further stated that the unemployment rate in Marshall is lower than the state and national average. He has concerns about the long term economics of the project due to the volatile nature of the pricing of the raw materials and the need for the batteries.

Scott Davis of Marshall Township stated that he was pleased to hear about the nature preserve and asked what else was being asked of Ford. He suggested asking for things such as a rec center while things were being settled.

Natalie Valle of Marengo Township stated that she chose Marshall due to the small town atmosphere with minimal traffic or safety concerns and is concerned Ford will change that for the area. She stated that kids are too disconnected and that they need more green space to help with anxiety and other issues. She feels a state park would be a good fit for the community. A copy of her statement was added to the record.

Maggie Emerson Rich of 616 Union St stated that she is still opposed to the megasite as the soil is highly permeable, so any accident would have materials in the water table, the river and ultimately Lake Michigan. She further stated that people from the plant wouldn't be able to afford housing in Marshall, and with the tax break, Marshall wouldn't see any extra money coming in. She suggested putting the plant in the industrial park away from the river.

Karli Withee of Marengo Township stated that she believes the history of the town will be lost with rapid growth and that the schools won't be able to handle it. She stated that the megasite area won't be the only land lost and that eventually the factory will move away and nothing will be left for the people in the area. A copy of her statement was added to the record.

Connie Wireman of Marshall Township stated that she has lived in Marshall her entire life and that she would like to see the current industrial park developed and a state park on the mega site. She believed that the factory would bring in blight and pollution and that residents would move away. A copy of her statement was added to the record.

Laura Bartlett of 435 N Linden stated that she had spoken with neighbors and they demand better leadership and transparency. She believes the proposed factory is a high risk and that eventually a vacant factory will serve as a reminder of bad decisions. A copy of her statement with various signatures was added to the record.

Emily Emerson Rich of 616 Union St stated she believes when governmental incentives change for alternative energy the factory will close. She urged the council to hear peoples voices and to put the issue to a referendum.

Sue Lee Bryant of Marshall Township stated that she is concerned about the environmental impact of the factory, especially on the water and wells. She stated that the river is full of people in the summer and worries about the air and potential health concerns. She further stated her concern about the involvement of the Chinese with the proximity to the federal center and Fort Custer.

Josh of Marengo Township stated that electric vehicles are a risky endeavor to invest in as the benefits and sustainability are still disputed and that they are highly politically driven. He stated that he would like to see other things done to make money and that people have legitimate concerns that need to be heard.

Mick Woods of Marshall Township stated that they would like to see this put to a vote due to the size and scale of the project. It was further stated that they don't believe the culture and small town feel will be able to be preserved and that Ford will be gone before their tax break is up.

Connie River of Marengo Twonship stated that she is opposed to the scope and scale of the Ford project and she believes the board was bought. She stated that her family intends to leave if the project comes and she is concerned about where those being displaced will be able to find homes.

Rick Sadler stated that he believes no one is listening to the people and that he doesn't expect this type of shady business at the local level. He further stated his concern about the lack of transparency and stated that this is not the American ideal.

## **7) CONSENT AGENDA**

**Moved** Scott Wolfersberger, supported Joe Caron to approve the consent agenda as presented. On a roll call vote:

Ayes: Joe Caron, Theresa Chaney-Huggett, Jacob Gates, Ryan Traver, Ryan Underhill, Scott Wolfersberger, Mayor James Schwartz

Nays: None  
Abstain: None

**Motion carried.**

**A. City Council Minutes**

Work Session-February 6, 2023  
Regular Session - February 6, 2023

**B. City Bills**

Purchases- 2/3/2023	\$377,993.43
Purchases- 2/10/2023	\$1,322,173.85
January Power Purchase-	\$877,755.84
<b>Total</b>	<b>\$2,577,863.12</b>

**8) PRESENTATIONS AND RECOGNITIONS**

**9) INFORMATIONAL ITEMS**

**10) PUBLIC HEARINGS & SUBSEQUENT COUNCIL ACTION**

**A. PA425 FOR MULTIPLE MARSHALL TOWNSHIP PROPERTIES**

Mayor Schwartz opened the public hearing on the proposed PA 425 land transfers of the following properties: 16-301-006-00, 16-290-024-00, 16-320-012-00, 16-291-012-00, 16-290-018-00, 16-282-009-00, 16-272-009-00, and 16-340-078-00.

Glenn Kowalske of Marshall Township stated he would like to see this put to a referendum, as he believes everyone loses in this. He stated that from his research MAEDA and the county started working on getting the site ready in 2019 and that there are at least 79 properties under option by MAEDA. He stated that there are multiple people on the MAEDA board, as well as other commissions that should have brought the details to the public. He stated that there have been several businesses that have come in since State Farm left and that the loss of population is due to high taxes. A copy of his statement is added to the record.

Rebecca Glotfelty of Charlevoix stated that she doesn't believe her dad would have wanted this and that this was a turning point for Marshall and the wrong choice was being made. She stated that Ford does not care about Marshall but that the people in the room do care and want better.

Conni Wireman of Marshall Township stated that hundreds of people on Michigan Ave and the surrounding area won't stay if the factory comes in due to light, sounds, and smells from the factory, and she may consider moving. She doesn't believe the water from any wells will be safe and won't patronize Marshall businesses if this factory comes in. She stated that there are businesses that can't find help now and that transparency and involvement from the start would have gone a long way.

Karli Withee of Marengo Township inquired how Ford would help with the infrastructure

of the area, including schools, police and fire. She inquired how the schools would handle the influx of the population and if they would fix damage to the road caused by the excess traffic.

Jason Blanchard of 311 N Madison stated that he would like to see the board abstain from voting so that more engagement and discussion can happen. He would like to see the process slowed down as he believes there are good intentions, but would like to understand better.

Josh of Marengo Township stated that he believes politicians are being influenced by things other than what is in the best interest of the people and that listening to the people would have a huge impact.

Barry Wayne Adams of 622 W Green stated that they don't need the council's permission for a referendum as per the city charter they only need 10% of the electorate to force an ordinance to be reconsidered. He stated that if this goes through there will be litigation. He would like to see the land used to grow hemp for hempcrete or other products instead of the destruction of land.

Maggie Emerson Rich of 616 Union St stated that this should be gradual growth and not full stream ahead. She further questioned what happens in 50 years when the agreement expires.

Matt Eggleton of 435 N Linden stated that Marshall has 190 years of farming history and that this project is incredibly risky as he believes it will be a brownfield in no time. He would like to see this put to a referendum.

Mayor Schwartz closed the public hearing on the proposed PA 425 land transfers of the following properties: 16-301-006-00, 16-290-024-00, 16-320-012-00, 16-291-012-00, 16-290-018-00, 16-282-009-00, 16-272-009-00, and 16-340-078-00.

Member gates stated that he appreciates everyone coming out and their passion. He stated that he believes climate change is real and that green investments and change are needed, and that we can't say not in my backyard. He further stated that he would love to see a state park or something similar, but this is not the location for it, as there needs to be more natural features to bring people in.

Mayor Schwartz stated that the number of people for or against this project seems to depend on the forum but that everyone's concerns are being listened to. He agreed that the need for the natural area between the factory and the river is important and that access to that area still needs to be addressed. He stated if everything that was brought before council was brought to a vote of the people, nothing would ever get done. He further stated that there are other small towns with large manufacturing and that it is about setting up the right parameters. He stated that no one is having their land grabbed away from them and that this is part of the process of getting the plans to the table for everyone to see.

Member Traver stated that he appreciated everyone's passion for the community. He further stated that outside of the meetings he had been approached by only 3 people opposed to the project, but dozens of people who are supporting it. He further stated that

there is a lot left to be planned and this is just one step in the process.

**Moved** Ryan Traver, supported Jacob Gates to approve the Public Act 425 Conditional Land Transfer for the following parcels: 16-301-006-00, 16-290-024-00, 16-320-012-00, 16-291-012-00, and authorize the City Manager and City Clerk to execute the associated Contract for Conditional Transfer of Property as presented; approve the Public Act 425 Conditional Land Transfer for the following parcel: 16-290-018-00, and authorize the City Manager and City Clerk to execute the associated Contract for Conditional Transfer of Property as presented; approve the Public Act 425 Conditional Land Transfer for the following parcel: 16-282-009-00, and authorize the City Manager and City Clerk to execute the associated Contract for Conditional Transfer of Property as presented; and approve the Public Act 425 Conditional Land Transfer for the following parcels: 16-272-009-00, and 16-340-078-00, and authorize the City Manager and City Clerk to execute the associated Contract for Conditional Transfer of Property as presented. On a roll call vote:

Ayes: Jacob Gates, Ryan Traver, Ryan Underhill, Scott Wolfersberger, Mayor James Schwartz, Joe Caron

Nays: Theresa Chaney-Huggett

Abstain: None

**Motion Carried.**

**B. TOBACCO ORDINANCE UPDATE**

Mayor Schwartz opened the public hearing on Ordinance 2023-05- Updates to the Tobacco Ordinance.

Chief Lankerdt stated that the only change was bringing the legal age in line with the state and federal law of 21 years of age.

Barry Wayne Adams of 622 W Green stated that there is no constitutional authority that tells people what they can and cannot do with their own body. He questions how far the council is willing to go and stated that it is not up to the government what people do.

Emily Emerson Rich of 616 Union St stated that if we're going to have a factory, many factory workers like to take smoke breaks and they should be allowed. She stated that if they are old enough to serve their country, they are old enough to smoke.

Rebecca Glotfelty of Charlevoix stated that the council can't regulate people.

Mayor Schwartz closed the public hearing on Ordinance 2023-05- Updates to the Tobacco Ordinance.

Mayor Schwartz stated that this is simply bringing the local ordinance in law with the federal and state laws.

**Moved** Ryan Traver, supported Ryan Underhill to approve Ordinance 2023-05- Updates to the Tobacco Ordinance. On a roll call vote:

Ayes: Jacob Gates, Ryan Traver, Ryan Underhill, Scott Wolfersberger, Mayor James Schwartz, Joe Caron, Theresa Chaney-Huggett

Nays: None  
Abstain: None

**Motion Carried.**

City of Marshall, Michigan  
Ordinance #2023-05

AN ORDINANCE TO AMEND THE CITY OF MARSHALL CODE OF  
ORDINANCES, SECTION 136.03.

**WHEREAS**, on July 21, 2022, the State of Michigan enacted Public Act 167 of Public Acts of 2022, which amends 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 amended as set forth herein:

**Section 1. Purpose.** For the public health, safety, and welfare of City residents and visitors to the City, to amend Section 136.03 Tobacco products, vapor products, alternative nicotine products, of the Marshall Code of Ordinances to maintain consistency and uniformity between the Act and local ordinance.

**Section 2.** That Section 136.03 Tobacco products, vapor products, alternative nicotine products, of the Marshall City Code is hereby amended, as indicated in strikes and bold, as follows:

**Sec. 136.03 Tobacco products, vapor products, alternative nicotine products.**

(A) *Definitions.* As used in this section:

*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 360ff-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 pre-filled 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 **21** years of age.

*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.

*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.

*Tobacco product* means a product that contains tobacco and is intended for human consumption, including, but not limited to, a cigarette, non-cigarette smoking tobacco, or smokeless tobacco, as those terms are defined in Section 2 of the Tobacco Products Tax Act, Public Act 327 of 1993, M.C.L.A. § 205.422, as may be from time to time amended, and a cigar.

*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.

*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 360ff-7.

(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 division 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~~ **21** years of age by doing one 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~~ **21** 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~~ **21** years of age or older.
- (D) A person who violates divisions (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 division 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 division 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 division 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 division 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 division (H) shall be punished as follows:
  - (1) 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.
  - (2) 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.
  - (3) 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:
  - (1) Purchase or attempt to purchase a vapor product or alternative nicotine product.
  - (2) Possess or attempt to possess a vapor product or alternative nicotine product.
  - (3) Use a vapor product or alternative nicotine product.
  - (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 vapor product or alternative nicotine product.
- (K) A minor who violates division (J) shall be punished as follows:
  - (1) 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.
  - (2) 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.
  - (3) 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) Divisions (H) and (J) do not apply to the following:

- (1) 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.
- (2) Undercover operations or compliance checks conducted in accordance with M.C.L.A. §§ 722.642(6)(a)—(c).
- (3) A minor charged with violating divisions (H) or (J) may be charged with, convicted of, or sentenced for any other violation of law arising out of the violation of division (E) or (G).

(Ord. 2019-05, passed 8-19-2019)

### **Section 3. Savings Clause.**

All proceedings pending and all rights and liabilities existing or incurred at the time this amendatory Ordinance takes effect are saved and may be consummated according to the law enforced when they were commenced. This amendatory Ordinance shall not be construed to affect any prosecution pending or initiated before the effective date of this amendatory Ordinance for an offense committed before that date.

### **Section 4. Conflicting Ordinances Repealed.**

Except as to prosecution and legal actions pending and saved pursuant to Section 3 above, any Marshall City Ordinances or parts of Ordinances in conflict with or inconsistent with any of the provisions of this Ordinance, are repealed.

### **Section 5. Severability.**

If any section, paragraph, clause, phrase or part of this Ordinance is held invalid by any court of competent jurisdiction or any agency, department or commission empowered by statute for such purposes, such decision shall not affect the validity of the remaining provisions of this Ordinance, and the application of those provisions to any person or circumstance shall not be affected thereby.

**Section 6. Code Edits.** The editors of the Marshall City Code are hereby authorized, subject to approval of the City Manager, or designee, to update and revise code section numbers to effectuate the provisions of this Ordinance.

**Section 7. Section Headings.** The section headings used in this ordinance are for convenience only and are not a part of this Ordinance.

**Section 8. Effective Date.** This Ordinance shall take effect upon publication.

Introduced by the Marshall City Council this 6<sup>th</sup> day of February, 2023.

**Motion by** Wolfersberger

**Second by** Underhill

**Ayes:** Mayor Schwartz, Gates, Traver, Underhill,  
Wolfersberger

**Nays:** None

**Absent:** None

Adopted by the Marshall City Council this 21<sup>st</sup> day of February, 2023.

**Motion by** Wolfersberger

**Second by** Gates

**Ayes:** Traver, Underhill, Wolfersberger, Mayor Schwartz,  
Caron, Chaney-Huggett, Gates

**Nays:** None

**Absent:** None

Approved:

James Schwartz, Mayor

### **C. GENERAL PENALTY ORDINANCE UPDATE**

Mayor Schwartz opened the public hearing on Ordinance 2023-06- Updates to the General Penalty Ordinance, Chapter 10, Section 10.99.

Chief Lankerd stated that this would bring the penalty ordinance in line with current state allowances and with penalties in other portions of the local ordinances.

Barry Wayne Adams stated that policing is a lucrative business and instead of creating higher penalties we should be focusing on giving people a life that would not have them wanting to drink. He further stated that money should not be the primary moving force.

**Moved** Scott Wolfersberger, supported Jacob Gates to approve Ordinance 2023-06-Updates to the General Penalty Ordinance, Chapter 10, Section 10.99. On a roll call vote:

Ayes: Ryan Traver, Ryan Underhill, Scott Wolfersberger, Mayor James Schwartz, Joe Caron, Theresa Chaney-Huggett, Jacob Gates

Nays: None

Abstain: None

**Motion carried.**

City of Marshall, Michigan

Ordinance #2023-06

### **AN ORDINANCE TO AMEND § 10.99 GENERAL PENALTY**

**WHEREAS**, Section 10.99 – General Penalty of the Marshall Code of Ordinances establishes the penalty for civil infractions and misdemeanor code violations; and

**WHEREAS**, Section 10.99(A) provides that the penalty for misdemeanor violations shall be a fine of not more than \$500.00, or imprisonment for a period not to exceed 90 days, or both; and

**WHEREAS**, Section 117.4i(k) of the Michigan Home Rule City Act, MCL 117.1 et seq, provides authority for the City to enact penalties which provide for a fine of not more than \$500.00, or imprisonment for a period not to exceed 93 days, or both, for code violations which substantially correspond to state law; and

**WHEREAS**, Section 117.4i(k) of the Michigan Home Rule City Act, MCL 117.1 et seq, provides authority for the City to adopt the statutory penalty for the offense of Operating a Motor Vehicle with a High BAC, MCL 257.625(1)(c), adopted by reference in Code Section 70.001; and

**WHEREAS**, Pursuant to the authorization set forth in Section 3(k) of the Michigan Home Rule Cities Act (MCL 117.3), the City of Marshall adopted the International Property Maintenance Code of 2015 (the “Code”) as the Property Maintenance Code of the City of Marshall, as amended.

**WHEREAS**, Public health, safety and welfare of city residents and visitors to the City will be furthered by amending Section 10.99(A) of the Marshall Code of Ordinances to include uniform penalties between code violations and that which substantially correspond to state law, and to permit the City to enforce violations of MCL 257.625(1)(c).

**NOW, THEREFORE, THE CITY OF MARSHALL ORDAINS,**

**Section 1. Purpose.** For the public health, safety, and welfare of City residents and visitors to the City, Section 10.99 – General Penalty of the Marshall Code of Ordinances is amended to establish uniform penalties between City ordinance and code violations and that which substantially correspond to state law, and to permit the City to enforce violations of MCL 257.625(1)(c).

**Section 2.** That Section 10.99, General Penalty, of the Marshall City Code is hereby amended, as indicated in strikes and bold, as follows:

1. Any person violating any provision of this Code for which a penalty is not otherwise specified, either in that provision or elsewhere in the Code, shall be guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be subject to a fine of not more than \$500.00, or to imprisonment in the county jail for a period of not more than 90 days, or to both such fine and imprisonment in the discretion of the court. **Provided, however, that a violation of this Code is punishable by a fine of not more than \$500 or imprisonment in the county jail for not more than 93 days, or both, if the violation substantially corresponds to a violation of state law that is a misdemeanor for which the maximum period on imprisonment is 93 days. In addition, the penalties provided by MCL 257.625(1)(c), adopted by reference in Section 70.01, are adopted by reference and violations shall be punishable by one (1) or more of the following:**

1. **Community service for not more than 360 hours;**
2. **Imprisonment for not more than 180 days;**
3. **A fine or not less than \$200 or more than \$700.**

(B) Provisions of this Code prescribing any penalty shall not apply to the failure of any city officer or employee to perform an official duty.

(C) The sanction for a violation which is a municipal civil infraction shall be a civil fine in the amount as provided by this Code or any ordinance, plus any costs, damages, expenses and other sanctions, as authorized under Chapter 87 of Act No. 736 of the Public Acts of 1961, as amended and other applicable laws.

- (1) Unless otherwise specifically provided for a particular municipal civil infraction violation by this Code or any ordinance, the civil fine for a violation shall be not less than **\$25** ~~\$50~~ nor more than \$500, plus costs and other sanctions, for each infraction. Costs shall include all expenses, direct and indirect, to which the city has been put in connection with the municipal civil infraction. In no case, however, shall costs of less than \$10 nor more than \$500 be ordered.

- (2) Increased civil fines may be imposed for repeated violations by a person of any requirement or provision of this Code or any ordinance. As used in this section, REPEAT OFFENSE means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision (i) committed by a person within any three-year period (unless some other period is specifically provided by this Code or any ordinance) and (ii) for which the person admits responsibility or is determined to be responsible. Unless otherwise specifically provided by this Code or any ordinance for a particular municipal civil infraction violation the increased fine for a repeat offense shall be as follows:
- (a) The fine for any offense which is a first repeat offense shall be no less than \$150 and no more than \$500, plus costs.
  - (b) The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be no less than \$500, plus costs.
  - (c) Repeat offenses are determined on the basis of the date of the commission of the offenses.
- (D) A violation includes any act which is prohibited or made or declared to be unlawful or an offense by this Code or any ordinance; and any omission or failure to act where the act is required by this Code or any ordinance.
- (E) Each act of violation and each day on which any violation of this Code or any ordinance continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.
- (F) In addition to any remedies available at law, the city may bring an action for an injunction or other process against a person to restrain, prevent or abate any violation of this Code or any city ordinance. The penalty or sanction shall be in addition to the abatement of the violating condition, any injunctive relief, revocation of any permit or license, or other process.
- (G) The penalties and sanctions provided by this section, unless another penalty or sanction as expressly provided, shall apply to the amendment of any section of this Code and/or any addition to this Code whether or not such penalty or sanction is reenacted in the amendatory ordinance.
- (H) All violations under the following chapters, articles and sections of the Marshall City Code of Ordinances shall be municipal civil infractions and shall be processed in accordance with Public Act 17 of the Public Acts of 1994, as amended, and pursuant to the provisions of this Code related to municipal civil infractions:

Sections 50.01 through 50.99, 70.009, 70.011, 70.013, 90.15 through 90.17, except as otherwise provided in 90.22, 91.02, 92.01

through 92.11, 97.21, 112.03, 130.03, 134.27, 134.30, 136.01(B)(1), 136.02, 136.03(G), 136.03(J), 137.01, 137.02, 137.03, 137.04(C) except as otherwise provided in 137.04(H)(2)(c) or 137.04(I), 137.04(E), 137.04(G), 137.04(H) except as otherwise provided in division 137.04(H)(2)(c), 137.05(H)(2), 137.23, and 150.086, IPMC Section 106.3.1.

(Prior Code, Sec. 1-10; Ord. 98-2, passed 2-2-1998; Am. Ord. 98-9, passed 8-3-1998; Am. Ord. 2020-07, passed 2-18-2020)

### **Section 3. Savings Clause.**

All proceedings pending and all rights and liabilities existing or incurred at the time this amendatory Ordinance takes effect are saved and may be consummated according to the law enforced when they were commenced. This amendatory Ordinance shall not be construed to affect any prosecution pending or initiated before the effective date of this amendatory Ordinance for an offense committed before that date.

### **Section 4. Conflicting Ordinances Repealed.**

Except as to prosecution and legal actions pending and saved pursuant to Section 3 above, any Marshall City Ordinances or parts of Ordinances in conflict with or inconsistent with any of the provisions of this Ordinance, are repealed.

### **Section 5. Severability.**

If any section, paragraph, clause, phrase or part of this Ordinance is held invalid by any court of competent jurisdiction or any agency, department or commission empowered by statute for such purposes, such decision shall not affect the validity of the remaining provisions of this Ordinance, and the application of those provisions to any person or circumstance shall not be affected thereby.

**Section 6. Code Edits.** The editors of the Marshall City Code are hereby authorized, subject to approval of the City Manager, or designee, to update and revise code section numbers to effectuate the provisions of this Ordinance.

**Section 7. Section Headings.** The section headings used in this ordinance are for convenience only and are not a part of this Ordinance.

**Section 8. Effective Date.** This Ordinance shall take effect upon publication.



Introduced by the Marshall City Council this 6<sup>th</sup> day of February, 2023.

**Motion by** Traver

**Second by** Gates

**Ayes:** Mayor Schwartz, Gates, Traver, Underhill,  
Wolfersberger

**Nays:** None

**Absent:** None

Adopted by the Marshall City Council this 21<sup>st</sup> day of February, 2023.

**Motion by** Wolfersberger

**Second by** Gates

**Ayes:** Traver, Underhill, Wolfersberger, Mayor Schwartz,  
Caron, Chaney-Huggett, Gates

**Nays:** None

**Absent:** None

Approved:

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James Schwartz, Mayor

## 11) OLD BUSINESS

## 12) REPORTS AND RECOMMENDATIONS

### A. MARSHALL HIGH SCHOOL BAND FUN RUN SPECIAL EVENT

**Moved** Joe Caron, supported Theresa Chaney-Huggett to approve the Marshall High School Band Fun Run Special Event Request for March 11, 2023 contingent on a letter of support from the school and proof of insurance. On a voice vote: **Motion carried.**

## 13) APPOINTMENTS / ELECTIONS

**A. CALHOUN COUNTY CONSOLIDATED DISPATCH AUTHORITY BOARD APPOINTMENT**

**Moved** Ryan Traver, supported Scott Wolfersberger to approve the Mayoral appointment of Council Member Joe Caron to the Calhoun County Consolidated Dispatch Authority. On a voice vote: **Motion carried.**

**B. AIRPORT BOARD LIAISON APPOINTMENT**

**Moved** Joe Caron, supported Ryan Traver to approve the Mayor's liaison appointment of Council Member Theresa Chaney-Huggett to the City of Marshall Airport Board. On a voice vote: **Motion carried.**

**C. DDA/LDFA APPOINTMENT**

**Moved** Jacob Gates, supported Ryan Underhill to appoint Diane Thompson to the DDA/LDFA Board of Directors. On a voice vote: **Motion carried.**

**14) PUBLIC COMMENT ON AGENDA AND NON-AGENDA ITEMS**

Persons addressing Council are required to give their name and address for the record when called upon by the Mayor. Members of the public shall be limited to speaking for a maximum of five (5) minutes on any item not on the agenda.

Rebecca Glotfelty of Charlevoix stated that the carbon footprint that is involved with electric vehicles is not a green solution. She further stated that the land would be better suited for a park, as the hollow trees provided homes for large birds, burrowing animals live in the hedgerows and they won't survive if they are forced into a small portion of land. She further stated that this is an instance of corporate welfare and that we are losing our democracy.

Emily Emerson Rich of Marshall inquired about the city bills and spending and stated that she felt it was high for a city. Manager Perry stated that he would share a copy of the spending with her after the meeting.

Conni Wireman of Marshall Township stated that the foundation is already there for a state park. She inquired where the electric and water would be coming from and if there were any studies to show how things would be provided. Mayor Schwartz stated that those items will all be determined during the site plan review process.

Barry Wane Adams of 622 W Green stated that environmentalists shouldn't believe that electric vehicles are helping and that the mining of cobalt is being done by child slaves. He further stated that he can't fathom giving up farm land for a factory for product that most people won't be able to afford. He stated that development ruins lives.

Jeff Wilson of Marengo Township stated that he wanted to recognize all the hardwork that went in to the recent production of Newsies.

Glenn Kowalske of Marshall Township stated that while he does believe in global warming he doesn't believe it is at a panic state and that the land use is actually capturing carbon, so we are adding to the problem by taking away land. He stated that the money for a park could come from grants. He stated that he would like to see the site plan and studies for the project, but believes the planning commission is the same as council where they don't listen to people.

Maggie Emerson Rich of Marshall stated that the footprint of the plant is horrific and that there is only a finite amount of water on the planet and we can't create more. She further

stated that when it comes to big change people want to be involved and questioned what is going to be done for already overwhelmed teachers.

Todd Bogarelli of Marshall stated that if the plant does go in, it won't be the end of Marshall as all the existing parks will still be here. He stated that while some employees will live in Marshall, others will commute and that there is opportunity. He further stated that factories are not soul crushing work and that we wouldn't have what we do without them. He stated that he appreciates council listening and that there are people who think there is a path forward.

**Moved** Ryan Underhill, supported Ryan Traver to extend the meeting beyond 10:00 p.m. On a voice vote: **Motion carried.**

#### **15) COUNCIL AND MANAGER COMMUNICATIONS**

Members Underhill and Chaney-Huggett stated their appreciation for everyone coming out.

Member Traver stated that he had a conversation with Ford about wages and was told that there were no wages determined yet, as they were still 3 years away from opening, so there is no way to know what the wages would be at that time, so any wages are purely speculation at this point.

Member Wolfersberger stated that the people on boards and commissions for the township and city, including MAEDA, are all volunteering their time to do what they see is best for the future of the area.

Mayor Schwartz stated that he does take notes and listen to the concerns of the people. He stated that there would be multiple occasions throughout the process to share any thoughts or concerns. He stated that the city is prepared for the ice storm coming in and also commended the production of Newsies and encouraged the supporting of the arts.

#### **16) ADJOURNMENT**

The meeting was adjourned at 10:20 p.m.