

REGULAR MEETING – MAY 28, 2013

The regular meeting of the Common Council of the City of Marshall was held on May 28, 2013 in the Professional Room at the Marshall Middle School, 401 South Saratoga Street. The meeting was called to order at 5:30 P.M. by Mayor Byrnes. In addition to Byrnes the following members were in attendance: Glenn Bayerkohler, John DeCramer, Larry Doom, Mike Boedigheimer and Ellayne Conyers. Absent: Jennie Hulsizer. Staff present included: Ben Martig, City Administrator; Dennis Simpson, City Attorney; Glenn Olson, Director of Public Works/City Engineer; Thomas M. Meulebroeck, Finance Director/City Clerk; and Jane DeVries, Deputy City Clerk.

The Pledge of Allegiance was recited at this time.

It was the general consensus of the council that the agenda be approved as presented.

BOARD & COMMISSION RECOGNITION:

At this time the City Council took the opportunity to recognize community residents for their contributions and time provided to the various boards and commissions. The following members were in attendance at the meeting and recognized:

Jeff Kruse, Community Services Advisory Board, 2006-2013

David Patterson, Senior Citizen Center Commission, 2012-2013

Joyce Arends, Police Advisory Board, 2007-2013

CONSIDER APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 14, 2013:

Member (**Larry Doom**) moved, Member (**Mike Boedigheimer**) seconded to approve the **ORIGINAL** motion 'that the minutes of the regular meeting held on May 14, 2013 be approved as filed with each member and that the reading of the same be waived'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**

PUBLIC HEARING ON AMENDMENT TO SEC. 66-108(F) EASEMENTS OF THE MARSHALL CITY CODE OF ORDINANCES AND ADOPTION OF ORDINANCE:

This was the date and time set for a public hearing on an amendment to Section 66-108 (f) Easements. Glenn Olson, Director of Public Works/City Engineer, indicated that the proposed revisions to the easement ordinance intend to acknowledge the common practice of paving over easements or installing fences. This ordinance revision will still allow relatively simple and fast access to utilities within the easement while giving people more flexibility in using their property.

Member (**John DeCramer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'that the Council close the public hearing'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**

Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **NEW** motion 'that the Council adopt ORDINANCE NUMBER 673, SECOND SERIES which provides for the amendment of the City Code of Ordinances, Sec. 66 108(f) relating to easements which acknowledges the common practice of paving over easements or installing fences'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**

PUBLIC HEARING AND CONSIDER ORDINANCE AMENDMENT TO ALLOW SUNDAY TAP ROOM LICENSE AND SUMMARY ORDINANCE.

This was the date and time set for a public hearing on an ordinance amendment to allow Sunday Tap Room License. Ben Martig, City Administrator, indicated that the City has been contacted by the Brau Brothers Brewing Company for consideration of two amendments to our City ordinance. One relates to adding the ability to have their taproom license on Sundays and a second one to reference State law related to authorities to sell “growlers.” The Legislative and Ordinance Committee (L&O) had discussed both at the meeting. Growlers are not currently allowed under the law at this time except for very small brewpubs; therefore, L&O decided to review the Sunday brewpub provision only. Staff had assumed the ability to have taprooms on Sundays was included in the original ordinance that was added to the City code recently. Upon further review upon preparing for the application to be received, it was noted that there is a separate authorization required for Sunday sales under the State Statute. This suggests that the ordinance should explicitly allow Sunday taproom authorization. Staff expects Sundays would be a logical day for tours since it is a weekend. Therefore, staff recommended to add this ability to have Sunday sales. Cal Brink with the Marshall Area Economic Development Authority had attended the meeting and indicated this had always been a requirement of Brau Brothers in relocating and it was very important to the success of their business model which the City has heavily invested in through the loan and other incentive package. Brau Brothers is requesting the change but was unable to attend the L&O meeting. The L&O committee recommended approval of the introduction of ordinance and call for hearing on a 2-1 vote. At the May 14, 2013 City Council meeting they introduced the ordinance amendment to allow Sunday Tap Room License and called for the hearing. Staff is drafting a summary ordinance for publication while still articulating written description of the change to the public

Council Member Bayerkohler was concerned with the hours for the Sunday Tap Room License. Mr. Martig indicated that these hours are consistent with the On-Sale Intoxicating Sunday Liquor License.

Member (**John DeCramer**) moved, Member (**Mike Boedigheimer**) seconded to approve the **ORIGINAL** motion 'to close the public hearing'. Upon a roll call vote being taken, the vote was: Aye: **5** Nay: **1**. The motion **Passed 5-1** with Bayerkohler voting no.

Member (**Larry Doom**) moved, Member (**Mike Boedigheimer**) seconded to approve the **NEW** motion 'that the Council adopt ORDINANCE NUMBER 674, SECOND SERIES, which provides for a Sunday Tap Room License'. The Summary Ordinance was also approved. Upon a roll call vote being taken, the vote was: Aye: **5** Nay: **1**. The motion **Passed 5-1** with Bayerkohler voting no.

CONSIDER APPROVAL OF CONSENT AGENDA:

Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'Consider approval of the following consent agenda items'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**

Approve the request of the Marshall Downtown Business Association for sidewalk closure on Main Street from College Drive to 6th Street and 3rd Street from Main Street to Lyon Street for a

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Sidewalk Sale on Thursday, August 15, 2013 from 8:00 a.m. to 7:00 p.m. in accordance with the Special Provisions noted by the Director of Public Works/City Engineer on the permit.

Authorization be granted for the street closure for the SMSU Homecoming Day Parade on Saturday, October 5, 2013. Line up would begin at 10:00 a.m., with the parade starting at 11:00 a.m. and ending at approximately 12:30 p.m. Line up would begin at Jewett Street and East Lyon Street to Bruce Street and beginning there, proceeding to East Main Street (T.H. 59) northwest to downtown Marshall and ending at 5th and 6th Streets upon the approval of MN/DOT.

The approval of Change Order No. 1 with Kuechle Underground, Inc. resulting in a contract increase in the amount of \$5,214.00 and a total contract amount of \$705,454.35 for West Redwood Street / North 3rd Street / West Marshall Street Reconstruction Project Z01.

The proper city personnel be authorized to enter into a Holding Tank Sewage Discharge Agreement with Laleman Septic Pumping Service effective May 28, 2013.

A Transient Merchant License for TNT Fireworks to sell Minnesota approved Safe & Sane Fireworks in the WalMart parking lot located at 1221 East Main Street. They will be selling fireworks from June 26, 2013 to July 7, 2013

CONSIDER SPECIAL EVENT PERMIT FOR SOUNDS OF SUMMER:

On April 23, 2013 the City Council adopted a resolution Declaring Sounds of Summer as a Community Festival. Sounds of Summer is scheduled for Thursday, August 15, 2013 through Sunday, August 18, 2013. This application identifies the various individuals, organizations and activities involved with the Sounds of Summer. Approval of this permit would allow the holder of a retail intoxicating liquor license to serve intoxicating liquor off their premises. By approving this Special Event Permit the Hitching Post will be allowed to serve alcohol at the Sounds of Summer.

Council Member Bayerkohler questioned the need to serve liquor at the Sounds of Summer. Russ Labat, President of the Sounds of Summer Committee, indicated that they have always worked with a current on-sale intoxicating license holder to allow them to serve alcohol at the Sounds of Summer. There have been no problems with alcohol being served.

Member (**Mike Boedigheimer**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'the approval of a Special Event Permit for the Marshall Festivals Inc., dba Marshall Sounds of Summer and approval for the Hitching Post to serve alcohol in the fenced off area of the parking lot on West College Drive from 5:00 P.M. to 11:00 P.M. on Thursday, August 15, 2013 and from 5:00 p.m. Saturday, August 17, 2013 to 1:00 A.M. on Sunday, August 18, 2013'. Upon a roll call vote being taken, the vote was: Aye: 5 Nay: 1. The motion **Passed 5-1** with Bayerkohler voting no.

CONSIDER APPROVAL OF THE BILLS/PROJECT PAYMENTS:

Council Member Bayerkohler asked if there was a policy on when the City pays for meals for committee meetings. Mr. Martig indicated that there is no policy. Bayerkohler also questioned the payment of \$1,989 for a liquor store consultant. Mr. Martig, City Administrator, indicated that the consultant is working on branding improvements for the Marshall Municipal Liquor Store.

Member (**Larry Doom**) moved, Member (**Mike Boedigheimer**) seconded to approve the **ORIGINAL** motion 'that the following bills and project payments be authorized for payment, ACCOUNTS PAYABLE, Voucher No. 84218 through 84426'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

PRESENTATION OF NORTH MEMORIAL AMBULANCE 2012 YEAR-END REPORT:

Dan DeSmet, Manager of the North Memorial Ambulance System was in attendance at the meeting to present the annual year-end report for 2012. Dan indicated that the ambulance service moved into a new, larger base of operations near the former city ambulance garage.

Council Member Bayerkohler stated that the 2012 year-end financial report for North Memorial Ambulance indicated that the Actual Net Profit Margin was significantly higher than budgeted. The Actual Net Profit Margin was \$359,179 while the Budgeted Net Profit Margin was \$157,374. In addition, the Actual Net Margin Percent was 27.6% while the Budgeted Net Margin Percent was 14%. Mr. DeSmet indicated that the difference came from several factors, including responding to nearly 200 more calls than anticipated.

CONSIDER TWO SPECIAL VEHICLE PERMITS FOR AVERA:

Thomas M. Meulebroeck, Finance Director/City Clerk, reviewed the request from Kelly Devlaeminck, Morningside Heights Care Center and Jackie Esping, Daybreak Adult Day Services, for two Special Vehicle Permits to transport their residents around Marshall. They are also requesting that the fee of \$35.00 per permit be waived. Rob Yant, Director of Public Safety, has reviewed these applications. Mr. Yant is recommending that they be driven during daylight hours, have turf tires, a beacon light attached to the rear of the vehicle and higher than the rear of the vehicle and trailer. They are to be used exclusively to transport residents of Morningside Heights Care Center and Daybreak Adult Day Services and may not exceed 20 mph.

Member (**Mike Boedigheimer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'to approve two Special Vehicle Permits for Morningside Heights Care Center and Daybreak Adult Day Services with the following conditions: the city agrees to waive the \$35.00 permit fee, and the vehicles be driven during daylight hours, must have turf tires, a beacon light attached to the rear of the vehicle and be higher than the rear of the vehicle and trailer; and the permit is limited exclusively to transport residents of Morningside Heights Care Center and Daybreak Adult Day Services, and the speeds of the permitted vehicle and trailer shall not exceed 20 miles per hour; and the permit is valid for all streets except East & West Main Street, East & West College Drive, Channel Parkway and all State Highways (except to cross) within City of Marshall'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

CONSIDER RESOLUTION APPROVING LOCAL SALES TAXES AND AUTHORIZING ACTIONS TO BE TAKEN BY THE CITY IN CONNECTION WITH SUCH TAXES.

Ben Martig, City Administrator, indicated that City bond Attorney Mike Norton combined the two resolutions into one since the final omnibus tax bill included clarification of both the food and beverage and lodging taxes. The intent of the action is the same. Staff removed the past two draft resolutions and included a new final version in with this agenda item.

Mr. Martig indicated that the City of Marshall has received technical correction to the food and beverage and lodging taxes from this legislative session. The council previously adopted the ordinances and are set to go into effect June 1 for the lodging tax and July 1 for the food and beverage tax. This resolution must be approved by the Council on or before July 1. This is the last requirement that must be approved and filed with the Secretary of State's office. The Department of Revenue has already recognized all of the taxes and implementation is underway locally and at the State. The City designated attorney's Kennedy and Graven drafted this resolution.

Council Member Bayerkohler was concerned that he did not have the opportunity to read through the updated resolution before being asked to vote. Bayerkohler suggested that this resolution be tabled until the next Council meeting to allow everyone the opportunity to review the resolution. Mr. Martig indicated that any questions or comments on this resolution need to be provided to him prior to the meeting, so that he would have time to contact the bond attorney.

Member (**Glenn Bayerkohler**) moved, Member (**Mike Boedigheimer**) seconded to approve the **SUBSTITUTE** motion 'that the resolution approving local sales taxes and authorizing actions to be taken by the City in connection with such taxes be tabled to the next regular meeting'. Upon a roll call vote being taken, the vote was: Aye: 3 Nay: 2 Abstain: 1. The motion **Passed 3-2-1** with Doom and Byrnes voting no and Conyers abstaining.

PROJECT Z05: TIGER PARK STORMWATER DETENTION POND PROJECT – STORMWATER POND EASEMENT AND ACCESS & LICENSE AGREEMENT WITH MINNESOTA STATE COLLEGES & UNIVERSITIES (MNSCU):

Glenn Olson, Director of Public Works/City Engineer, reviewed the Stormwater Pond Easement and Access & License Agreement as required by MnSCU. Mr. Olson indicated that in order to provide required storm water detention and treatment, a project has been designed including the expansion of the existing Marshall High School storm water pond, the construction of two new storm water ponds in the northeast and northwest portions of the intersection of East College Drive (TH 19) and TH 23, and related storm sewer work. The work provides storm water storage and storm water treatment prior to the outfall to Branch 10 of the Lyon County Ditch System. As portions of this project are being constructed on property owned by Southwest Minnesota State University, the City is required to obtain and execute an Easement and an Access & License Agreement with MnSCU.

Dennis Simpson, City Attorney, indicated that he has discussed a couple of changes with Minnesota State Colleges & Universities.

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Member (**John DeCramer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'that the Council approve the Stormwater Pond Easement and Access & License Agreement with Minnesota State Colleges & Universities (MnSCU) for the Tiger Park Stormwater Detention Pond Project Z05, contingent upon City Attorney review and approval'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

PROJECT Z04/S.P. 139-090-004: 2013 BIKE TRAIL PROJECT (INDEPENDENT LUMBER TO T.H. 19) – EASEMENTS WITH KNOLOGY AND GOOD SHEPHERD LUTHERAN CHURCH:

Glenn Olson, Director of Public Works/City Engineer, indicated that the 2013 Bike Trail Project includes the construction of a 0.92-mile segment of multi-use trail suitable for traveling by foot, wheelchair, stroller, or bicycle. The trail will be constructed from Clarice Avenue to East College Drive along the east side of T.H. 23. The project is included in the 2013-2016 State Transportation Improvement Program (STIP) and has \$174,870 in Federal funding scheduled for construction of the trail. As portions of this project are being constructed on property owned by Knology, Inc. or Good Shepherd Lutheran Church, the City is required to obtain and execute temporary construction agreements and/or permanent easements for said property.

Council Member Bayerkohler indicated that he is a member of Good Shepherd Lutheran Church and he advised the church to contact a lawyer to review the easement. Bayerkohler was concerned with the easements having the correct name on them, the legal description being correct, the amount of compensation and if there is a standard procedure when it comes to negotiation of easements. Bayerkohler indicated that the legal description and name on the easement for Good Shepherd Lutheran Church is not correct.

Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **SUBSTITUTE** motion 'that the Council approve the Temporary Construction Agreement with Knology, Inc. and the approval of a Permanent Easement with Knology, Inc., contingent upon City Attorney review and approval'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **SUBSTITUTE** motion 'that the Council approve the Grant of Permanent Easement with Good Shepherd Lutheran Church, contingent upon verification of the legal name of the church, property description and City Attorney review and approval'. Upon a roll call vote being taken, the vote was: Aye: 5 Nay: 0 Abstain: 1. The motion **Passed 5-1** with Bayerkohler abstaining.

CONSIDER APPROVAL OF PERFORMANCE MEASUREMENT SURVEY FOR 2013:

Ben Martig, City Administrator, indicated that in 2010, the Legislature created the Council on Local Results and Innovation. In February 2011, the Council released a standard set of ten performance measures for counties and ten performance measures for cities that will aid residents, taxpayers, and state and local elected officials in determining the efficacy of counties and cities in providing services and measure residents' opinions of those services. In February of 2012, the Council created a comprehensive performance measurement system for cities and counties to implement. In 2013, the Council revised the performance measures and clarified the system requirements to increase participation in the program. Participation in the standard

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measures program by a city or a county is voluntary. A county or city that elects to participate in the standard measures program is eligible for a reimbursement of \$0.14 per capita in local government aid, not to exceed \$25,000 and is also exempt from levy limits under sections 275.70 to 275.74 for taxes payable in the following calendar year, if levy limits are in effect. In order to receive the per capita reimbursement in 2013, and levy limit exemption for calendar year 2014, counties and cities must: file a report with the Office of the State Auditor by July 1, 2013. This report will consist of: 1) a resolution approved by the city council declaring that: • The city has adopted and implemented the minimum 10 performance measures developed by the Council on Local Results and Innovation. • The city has implemented a local performance measurement system as developed by the Council on Local Results and Innovation. • The city has or will report the results of the 10 adopted measures to its residents before the end of the calendar year through publication, direct mailing, posting on the entity's website, or through a public hearing at which the budget and levy will be discussed and public input allowed. • The city has or will survey its residents by the end of the calendar year on the services included in the performance benchmarks. 2) The actual results of the performance measures adopted by the city.

Member (**John DeCramer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'approval of City of Marshall Performance Measurement Survey for 2013'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**

CONSIDER ADOPTION OF RESOLUTION ACCEPTING DONATION OF PROPERTY FOR THE MARSHALL FIRE DEPARTMENT SCHOLARSHIP FUND:

Ben Martig, City Administrator, indicated that the City of Marshall has received an anonymous donation of \$600.00 to be used to award scholarships for the 2013/14 academic year and an additional \$115.00 of memorials for David Marks to be placed in the Marshall Fire Department Scholarship Fund for future scholarships.

Member (**John DeCramer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'the adoption of RESOLUTION NUMBER 3888, SECOND SERIES accepting the Donation of Personal Property for the Marshall Fire Department Scholarship Fund'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**

CONSIDER APPOINTMENTS TO VARIOUS BOARDS/COMMISSIONS:

Per the recommendation of Mayor Byrnes, Member (**Larry Doom**) moved, Member (**Mike Boedigheimer**) seconded to approve the **ORIGINAL** motion 'approve the following appointments to various boards and commissions'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**

Police Advisory Board - Carole Olson-Kerkaert be appointed to an unexpired term to expire on May 31, 2014

Community Services Advisory Board – Ruth Larson be reappointed for a 3-year term to expire on February 28, 2016

Community Services Advisory Board – Keo Moua Rasmussen be appointed for a 3-year term to expire on February 28, 2016

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Community Services Advisory Board – Nicholas Gigliotti be appointed for a 3-year term to expire on February 28, 2016

COMMISSION/BOARD LIAISON REPORTS:

Reports by the Mayor and Council Members of the various Boards and Commissions were presented at this time:

Byrnes Regional Development Commission held a 2-day planning session.

Doom Convention and Visitors Bureau met on May 23rd.

Bayerkohler No report.

DeCramer EDA did not meet; Utilities Commission indicated that they gave notice to Prairie Net Wan that they will no longer be part of the organization. This will affect the IT service for the City of Marshall.

Boedigheimer No report.

Conyers Community Services Advisory Board will not be meeting during the summer months.

COUNCILMEMBER INDIVIDUAL ITEMS:

Mayor Byrnes provided information on the levy limits as part of the tax bill. The MERIT Center and SMASC Facilities Executive Committee met to discuss where to go from here due to the bonding not being successful at the State Legislature. The Executive Committee is looking for questions or feedback at this time.

It was Council Member Bayerkohler's understanding that the additional taxes approved at the November election were supposed to generate enough revenues to construct the MERIT and SMASC facilities. He said that he did not see anything in the election literature that was provided to the general public which indicated that construction of the facilities was contingent upon receiving additional funding from the legislature.

STAFF REPORTS:

Ben Martig, City Administrator, indicated that there will be a work session with the School District on Monday, June 3, 2103; there was a meeting last week with the LEC to discuss the phone system and the County Administrator will put information together for another meeting. Mr. Martig indicated that he has been the liaison for the Coalition of Greater Minnesota Cities and asked if a council member would like to take this over. Staff is working on bonding for the 2013 improvement projects; and a Legislative and Ordinance Committee meeting needs to be scheduled to discuss the Vehicle Ordinance.

Glenn Olson, Director of Public Works/City Engineer, indicated that he is in favor of a council member being the liaison for the Coalition of Greater Minnesota Cities. Mr. Olson indicated that Wastewater Staff are involved with the Coalition. The wet weather is delaying the construction

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projects. The 5th Street walk bridge has been installed. Mr. Olson will request MN/DOT to repair the potholes on the State Highways located in town.

Dennis Simpson, City Attorney, is continuing to work on agreements and easements for the City. Council Member Boedigheimer indicated that the council has not yet received the appraisal for the Bud Rose Property and he would like an update on the status of the apartment on Mill Street that burned last year.

PENDING ITEMS:

There were no questions on pending items.

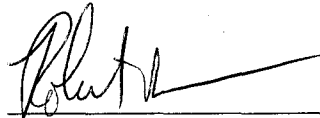
INFORMATION ONLY:

There were no questions on the information items.

UPCOMING MEETINGS:

There were no questions on upcoming meetings.

Member (**Larry Doom**) moved, Member (**Mike Boedigheimer**) seconded to approve the **ORIGINAL** motion 'adjourn meeting'. Upon a roll call vote being taken, the vote was: Aye: 6
Nay: 0. The motion **Carried 6 - 0**



Mayor of the City of Marshall

ATTEST:



Finance Director/City Clerk