

**CITY COUNCIL MINUTES**  
**MAY 15, 2023**  
**6:00 P.M.**

The Marshall City Council met in Regular Session at 6:00 p.m. on Monday, May 15, 2023, in the Council Chambers of the City Office Building, 214 N. Lafayette, Marshall, MO 65340, with the following members present: Mayor Vincent Lutterbie; Council Members John Allen Jr., Drew Green, Nathan Swisher, Craig Thompson, Dan Brandt and Steve Cook; Phil Perkins and Charles Guthrey present via videoconference; City Administrator JD Kehrman, City Counselor Josh Taylor and City Clerk Julie Lewis.

Council Member Green made a motion to adopt the agenda as written. Council Member Thompson seconded the motion. A voice vote was taken with all in favor. Motion carried.

Council Member Brandt made a motion to approve the minutes of the Special Session of April 26, 2023 and Regular Session of Minutes of May 1, 2023. A voice vote was taken with all in favor. Motion carried.

**BUSINESS FROM THE AUDIENCE**

Mr. Tom Ward, resident of Ward 2, spoke about potential Sunshine Law violations during 2021 and 2022. He asked Council Members if they were aware of the potential violations.

Mr. Ward spoke about the City Administrator employment contract.

Mr. Ward said there is an ordinance on the agenda concerning the retention and destruction of records. He asked if there will be a list of records to be destroyed and if that list will be made public. He also asked if citizens can request certain records be retained instead of destroyed.

**COMMITTEE REPORTS**

**COMMUNITY DEVELOPMENT AND CODE COMMITTEE:**

Council Member Cook reported the Board of Building Code Enforcement will conduct hearings on May 24, 2023 at 8:30 a.m. and June 28, 2023 at 8:30 a.m.

**PUBLIC RELATIONS AND PUBLIC SAFETY COMMITTEE:**

No report.

**MUNICIPAL SERVICES AND PERSONNEL COMMITTEE:**

Council Member Brandt reported there will be a pre-construction meeting held with slurry seal and mill & overlay contractors on Wednesday. Information will be put out regarding the construction plan.

The curbside trash collection schedule will be postponed by one day during the week of May 29<sup>th</sup> due to the Memorial Day holiday.

Municipal Services crews will conduct a “Bulk Item Pickup” during the week of June 12<sup>th</sup> through June 15<sup>th</sup>. The schedule will be:

Ward 4	-	Monday, June 12, 2023
Ward 3	-	Tuesday, June 13, 2023
Ward 2	-	Wednesday, June 14, 2023
Ward 1	-	Thursday, June 15, 2023

Council Member Brandt explained RTS crews will still be picking up regular trash on the regular schedule. The Municipal Services employees will receive extra compensation for the Bulk Item Pickup. More information will be posted on the City’s website within the next two days.

Jerry Searle and Eric Hanson, Engineers with HDR, gave a presentation to Council about proposed improvements to the Marshall Memorial Municipal Airport.

An Airport Master Plan was completed several years ago and the next step is to proceed with implementing some of the proposed improvements, following MoDOT and FAA approval.

Mr. Searle explained the airport contributes to the local economy with a number of agricultural businesses that have aerial operations. It becomes congested during the applicator season so the Master Plan includes a proposed Ag Business Park. The source of funding is derived from the FAA and passes through MoDOT which means that both of those agencies prioritize the projects. They have no problem with the Ag Business Park but feel the parallel taxiway is a priority.

Mr. Searle spoke about the issue of accommodating the aerial applicators that operate from May through October and explained options to provide more parking and tie down spaces for airplanes. They would like to request that MoDOT tie this into the taxiway rehabilitation project.

Mr. Searle said he hopes to see assistance through the USDA to help develop the Ag Park area in the future. He told Council that in order to grow the Airport with more aircraft and active users, HDR recommends serious consideration to allowing the private sector to make an investment.

Council Member Brandt asked what needed to be done in order to move forward.

Mr. Searle said he will need a recommendation from Council as to their priorities – do they concur with MoDOT regarding the taxiway and other improvements? Do you want to pursue USDA funds for assistance with the Ag apron?

Council Member Brandt made a motion, seconded by Council Member Green, to move forward with the Taxiway A project, along with improvements related to parking, and to pursue USDA assistance for the proposed Ag apron. A roll call vote was taken with Thompson, Brandt, Cook, Allen, Perkins, Green, Swisher and Guthrey voting aye. Motion carried.

**PROPERTY, FINANCE, BUDGET AND AUDIT COMMITTEE:**

Council Member Green asked Finance Director Aimee Klinge for an update.

Ms. Klinge said things are wonderful.

**CITY ADMINISTRATOR’S REPORT:**

City Administrator JD Kehrman reported there will be a pre-construction meeting with street construction vendors on Wednesday. There will also be a meeting on Tuesday with the Stormwater Engineer and the Street Superintendent regarding some ongoing FEMA projects.

There will be a meeting with the Mayor and MPS School Superintendent regarding some property issues including ingress and egress at the old habilitation center property.

He is also working with the Mayor on a Request for Proposals for the old “Fitzgibbon” site.

**MAYOR’S REPORT:**

No report.

**MARSHALL PARKS AND RECREATION  
UPDATE/OVERVIEW OF OPERATIONS**

Chad Unterreiner, Director of Parks and Recreation, provided an update of operations.

Marshall Aquatic Center opening day will be May 27<sup>th</sup>. That date will be tentative, depending upon the weather. Individual and family passes are available.

Shelters are being scheduled, there are a lot of people utilizing them.

The Park has expanded their partnership with the YMCA and Conservation. YMCA is in charge of t-ball, 8 & under coach’s pitch and swim team. The Conservation Department will be adding trees to Peyton Park.

Little league games have started; 8 & under and t-ball have started practices and will start games at the end of May.

**DISCUSSION AND APPROPRIATE FOLLOW UP**

**PROPOSAL FOR PHASE ONE ENVIRONMENTAL SITE ASSESSMENT:**

Proposals were accepted for Phase One Environmental Site Assessment at 868 South Brunswick in Marshall. Proposals were requested from three firms with two firms providing a proposal. It is the recommendation to accept the proposal of Terracon Consultants, Inc. in the amount of \$3,000 for the Phase One Environmental Site Assessment at 868 South Brunswick in Marshall.

Council Member Allen made a motion to accept the proposal of Terracon Consultants, Inc., as presented. Council Member Green seconded the motion. A voice vote was taken with all in favor. Motion carried.

**CHAMBER OF COMMERCE FIREWORKS FUNDING REQUEST:**

The Marshall Chamber of Commerce is requesting funding in the amount of \$3,675.00 for the Fourth of July Fireworks at Indian Foothills Park. The amount is half of the cost of the fireworks.

Council Member Green asked if the amount is budgeted. The Finance Director said yes.

Council Member Brandt made a motion to provide \$3,675.00 to the Marshall Chamber of Commerce for the purpose of Fourth of July Fireworks. Council Member Craig Thompson seconded the motion. A voice vote was taken with all in favor. Motion carried.

**ORDINANCES**

An ordinance entitled “AN ORDINANCE OF THE CITY OF MARSHALL CONCERNING THE RETENTION OF RECORDS” was given its first reading by title only.

Council Member Brandt made a motion, seconded by Perkins, to approve the first reading. A roll call vote was taken with Brandt, Cook, Allen, Perkins, Green, Swisher, Guthrey and Thompson voting aye. Motion carried.

Council Member Guthrey exited the meeting at approximately 6:41 p.m. due to failure of videoconferencing connection.

An ordinance entitled “AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY OF MARSHALL TO OBTAIN AN ENVIRONMENTAL STUDY AT 868 SOUTH BRUNSWICK AVENUE IN THE CITY OF MARSHALL” was given its first reading by title only.

City Administrator JD Kehrman explained the environmental study is needed to determine if there are any tanks buried in the ground at 868 South Brunswick.

Council Member Green made a motion, seconded by Cook, to approve the first reading. A roll call vote was taken with Allen, Perkins, Green, Swisher, Thompson, Brandt and Cook voting aye; Guthrey excused absent. Motion carried.

An ordinance entitled “AN ORDINANCE MAKING THE APPROPRIATION FOR THE PAYMENT OF ACCOUNTS OUT OF THE DIFFERENT CITY FUNDS” was given its first reading by title only.

Council Member Brandt made a motion, seconded by Green, to take the ordinance to a second reading. A roll call vote was taken with Green, Swisher, Thompson, Brandt, Cook, Allen and Perkins voting aye; Guthrey excused absent. Motion carried.

An ordinance entitled “AN ORDINANCE MAKING THE APPROPRIATION FOR THE PAYMENT OF ACCOUNTS OUT OF THE DIFFERENT CITY FUNDS” was given its second reading by title only.

Council Member Allen made a motion, seconded by Green, to approve the Appropriation ordinance. A roll call vote was taken with Swisher, Thompson, Brandt, Cook, Allen, Perkins and Green voting aye; Guthrey excused absent.

The Mayor asked for the Clerk to give one more reading of the Appropriation ordinance.

Ordinance No. 8758 entitled “AN ORDINANCE MAKING THE APPROPRIATION FOR THE PAYMENT OF ACCOUNTS OUT OF THE DIFFERENT CITY FUNDS” was read by title only. The ordinance is thereupon declared passed and so endorsed by the President of the Council and approved by the Mayor.

Council Member Guthrey present at approximately 6:47 p.m. after restoration of videoconferencing connection.

### **OTHER COUNCIL BUSINESS**

Mayor Lutterbie asked Mr. Ward to speak.

Mr. Ward spoke about the reasons cited for entering into a closed session. He indicated he does not feel it is appropriate, that it is a blatant violation of the Sunshine Law. If you can have charges read against an elected official in an open meeting then you can have the open meeting when you judicate the charges. Closing a meeting to potentially protect an employee from retribution is closing the public out of the meeting, the public isn't seeking retribution and retribution is not an enumerated reason in the Sunshine Law. What is important is what you guys do when no one is looking.

Council Member Swisher inquired as to how the Council got to this point. An ordinance was passed on December 19<sup>th</sup> to authorize an agreement for legal services with Paul Martin Law, LLC. Council Member Green had asked for clarification and was told that the agreement would provide for review of records requests and additional review of matters relating to general municipal law. The City of Marshall has spent \$13,255 on a prosecutor not records requests or legal matters relating to general municipal law.

Council Member Swisher asked Council Members if they were aware they were hiring a prosecutor to investigate a sitting Council Member.

Council Member Thompson said he doesn't really know what they are doing and it is getting old. We are wasting time on this when we should be moving forward. If this doesn't get cleared up, he will be stepping down because we are not doing Marshall any justice.

Council Member Brandt said he knew the Council was hiring Mr. Martin to compile information because of the information requests.

Council Member Cook said he did not know, just that there had been a bunch of requests and we needed another outside counsel to look into such things.

Council Member Swisher said it seems that Council hired a prosecuting attorney without knowing it and spent \$13,000 without having full knowledge of what they were doing.

Council Member Swisher asked Mr. Martin who his point of contact is within the City.

Mr. Martin said his client is the City Council and he responds to Council and staff as appropriate.

Council Member Swisher asked Mr. Martin who he directly emails and contacts.

Council Member Cook asked if Council Member Swisher has received emails from Mr. Martin.

Council Member Swisher said he has but he hasn't received email chains asking for more information or disputing against Mr. Green on rebuttals.

Mr. Martin said what he has to talk about this evening may be moving this issue forward and he would like to have the opportunity to do so.

Council Member Swisher asked if City Counselor Josh Taylor has been a point of contact.

Mr. Martin said he has talked with Mr. Taylor.

Council Member Swisher asked if Mr. Martin has been in contact with Mr. Kehrman.

Mr. Martin said he has been in contact with Mr. Kehrman.

Council Member Swisher said he feels that being in contact with Mr. Taylor and Mr. Kehrman is a conflict of interest since they are actually involved. There has been no Special Work Session or Executive meeting called to discuss the investigation or to approve an investigation of charges against Mr. Green so he doesn't understand what authority anyone is acting under. Most of the Council is in the dark as to what is going on.

Council Member Cook said he knows what is going on. There was a complaint against Council Member Green brought to Mr. Taylor or Mr. Kehrman and they hired this guy to look into it. This is not something Council would look into ourselves, he is an unbiased investigator that gathered information and presented a list of charges to Council. We decided to have an open

public hearing that will allow both sides to lay out their evidence. That is the easiest and most transparent way to do this.

Council Member Swisher said it seems that a prosecutor was hired under false pretenses and believes that should make the contract with Mr. Martin null and void. He does understand the point of the trial but does not agree with how the Council got here and he wants to clear this up so there is never a repeat issue.

Mr. Ward reminded Council that they cannot require the members of the public to leave when going into closed session; that is a violation of the Sunshine Law. Council Member are to retire to chambers to discuss closed business and he advised Council not to go into closed session.

Mr. Martin said he had prepared a detailed presentation but will forgo that after a very positive discussion with Mr. Green's attorney this afternoon. At this time he would like to ask Council to postpone the hearing due to the short time frame for preparations by both attorneys and he would like to request a closed session for attorney/client discussions.

Council Member Cook made a motion to postpone the hearing, but would like to have a specific hearing date set. There was no second.

Council Member Green discussed his schedule and suggested postponing until such a time as can be agreed upon by all parties.

Council Member Cook made a motion, seconded by Allen, to postpone the hearing until such a time as can be agreed upon by all parties. A voice vote was taken with all in favor. Motion carried.

Council Member Brandt made a motion, seconded by Cook, to enter into Executive Session concerning legal actions, causes of actions or litigation involving a public governmental body and any confidential or privileged communications between the public governmental body or its representatives and it's attorney with the meeting being adjourned at the completion of such session. A roll call vote was taken with Guthrey, Thompson, Brandt, Cook, Allen, Perkins, Green and Swisher voting aye. Motion carried and the meeting went into Executive Session at 7:03 p.m.

Julie A. Lewis,  
City Clerk