

CITY COUNCIL PROCEEDINGS

February 9, 2005

The City Council of the City of David City, Nebraska met in open public session in the meeting room of the City Office, 557 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner-Press on February 3, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor and Council members conveyed the availability of the Agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Stephen Smith, Council members Gary L. Kroesing, Ted Lukassen, Mark Kirby, Gary Smith, Nick Hein, and Bill Schatz, City Administrator Jeff Fiegenschuh, Attorney Jim Birkel, Water/Sewer Supervisor Jim Kruse, Electric Supervisor Tim Kovar, Street Superintendent Jim McDonald, Planning Commission members James Masek, James Vandenberg, and George Cunningham, Zoning Administrator Roger Kotil, Chief Deputy State Fire Marshal Don Fritz, Fire Chief Mike Hiatt, Mark Sloup, Scott Steager, Mike Sousek of Lower Platte North NRD, Greg Janak, Gene Zeilinger, Cleo Pope, Ed Sieck, B.C. Skate Park Association members Dave, Michelle, & Alex Streeter, Randy, Wendy, and Dylan Isham, Jeanne & Joe Ingwersen, Mark, Kristi, Alex, and Andy Palik, Justin Kouba, Nick Shultz, and salesman Bill Pospichal of Elkhorn, Doug Johnson manager of D & B Aero Leasing L.L.C. Ag Inc., Banner Press Editor Larry Peirce, and City Clerk-Treasurer Joan E. Kovar.

The meeting opened with the Pledge of Allegiance.

The minutes of the January 12, 2005 meeting of the Mayor and City Council were approved upon a motion by Council member Lukassen and seconded by Council member Hein. Voting YEA: Council members Kirby, Kroesing, Smith, Schatz, Lukassen, and Hein. Voting NAY: None. The motion carried.

Mayor Smith asked for Petitions, Communications and Citizens' Concerns in addition to those contained in the Agenda packets. There were no petitions or citizens concerns.

The following letter was received:

On Saturday, January 15, my electricity went out completely. Pat Hoefft and Tim Kovar came and after finding no problem outside, came to my house. They were very kind and helpful. I wanted to thank them again and to tell you they were very courteous and helpful to me.
Pauline Tesina

Mayor Smith asked for consideration of claims. Council member Kirby made a motion to authorize the payment of claims. Council member Smith seconded the motion. Voting YEA: Council members Lukassen, Schatz, Hein, Kirby, Kroesing, and Smith. Voting NAY: None. The motion carried.

Mark Palik, representing the B.C. Skate Park Association, reported they have been working on this project for approximately one year and have raised \$3,000 thus far. They conduct meetings every two weeks and have the support of the D.C. Area Jaycees and the Boy Scouts. Originally they thought of locating by the Youth Center, 660 5th Street. When the Skate Park Association met with members of the Congregational Church, 696 N 5th Street, church members expressed concerns regarding the noise from the skate park in proximity to the church. The

Skate Park members then thought of locating by the ballfields, however apparently the soccer association members are already trying to obtain land from the D.C. Ball Association for soccer fields. Shelly Streeter and Wendy Isham are in the process of applying for a Tony Hawk Foundation grant and a Peter Kiewitt grant. These are "not" matching grants. Before they can apply for grants they need a location for the skate park. They would like the skate park to be located in the city park, south of the west shelter. The area would be approximately 80' x 55' with an estimated cost of \$25,000 and would be approximately 30' from the walking trail.

Attorney Birkel questioned who the D.C. Skate Park Association was. Mark Palik stated it is a group who came together to raise funds. They have obtained an I.D. number and are a non-profit association. They stated that once the skate park is erected the D.C. Skate Park Association will give the skate park to the City.

Mayor Smith stated that the Council needs to check on liability issues, and questioned if the Association gives the skate park to the City, who is responsible for maintenance of the equipment or broken cement, or whatever. Bill Pospichal, Elkhorn, reported that skate parks are increasing in popularity for skate boards, in-line skates, and bicycles. It is an individual sport. Pospichal stated that the City would only be liable for the amount of the actual injury which will probably only be a broken arm, if that. The Association stated that they will remain the D.C. Skate Park Association and they will maintain the skate park.

Mayor Smith stated he realizes that the D.C. Skate Park Association is on a time-line to submit their grant requests, however the City Park is listed on the Historic Register and we need to check with the NE State Historical Society to see what is allowed in the park. Mayor Smith then suggested recessing until February 28th to allow the Council time to get answers to some of their questions. Council member Kirby stated that he felt the skate park belonged by the tennis courts and not in the main park area. Council member Lukassen agreed as did the other council members. It was decided that this item will be discussed further on February 28th, with the proposed location being north of the tennis courts, and by then hopefully we will have an answer from the NE State Historical Society.

Council member Hein made a motion to advance to agenda item #11 - Consideration of a revision to the addendum to the interlocal agreement with Lower Platte North NRD. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mike Sousek of Lower Platte North NRD reported that originally Bruno was going to build the water system and then Lower Platte North NRD was going to buy it from Bruno. The USDA that is providing the funding expressed concerns that it appeared that Bruno was going to get a kick-back from the sale to Lower Platte North NRD. They are now flip-flopping. Lower Platte North NRD will build the water system and then sell it to Bruno. Sousek will have the Village of Bruno review the amendment and sign it, if in agreement, and then it will be presented to the City at a later date for signatures. The proposed "First Amendment" follows.

**FIRST AMENDMENT to the INTERLOCAL AGREEMENT FOR
WATER SUPPLY SERVICE FROM DAVID CITY, NEBRASKA
TO BRUNO, NEBRASKA**

THIS AMENDED AGREEMENT ("Amended Agreement") is made and entered into by and among the VILLAGE OF BRUNO, Nebraska, a Municipal Corporation, hereinafter referenced as "BRUNO"; the CITY OF DAVID CITY, NEBRASKA, a Nebraska

Municipal Corporation, hereinafter referenced as "David City"; and the LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT, a Nebraska Natural Resource District and political subdivision of the State of Nebraska, hereinafter referenced as "LPNNRD".

WHEREAS, BRUNO, DAVID CITY, AND LPNNRD entered into an Interlocal Agreement For Water Supply Service From David City, Nebraska to Bruno, Nebraska executed by Bruno March 8, 2004, executed by David City August 18, 2003, and executed by LPNNRD August 14, 2003 and the First Addendum to Interlocal Agreement For Water Supply Service From David City, Nebraska to Bruno, Nebraska executed by Bruno August 20, 2004, executed by David City June 9, 2004, and executed by LPNNRD on June 14, 2004 with said Interlocal Agreement and First Addendum to Interlocal Agreement hereinafter referenced as "Agreements", with all its terminology references being incorporated herein; and,

NOW, THEREFORE, IN CONSIDERATION OF THE TERMS AND CONDITIONS STATE HEREIN which the parties hereto agree to be valuable consideration, the parties hereto agree to the following amendments, changes, and addendums to the Agreements, to wit:

1. Paragraph V of the Agreements is to be amended as follows:

- Items (a), (b), and (f) will have LPNNRD substitute for the Bruno references.
- Item (e) is amended to read as follows:

(e) LPNNRD will extend to David City the EXCLUSIVE RIGHT TO PURCHASE the "Water Main" assets. The costs of purchase by David City will be the actual cost of the "Water Main" part of the project contemplated in the Agreements and this Amended Agreement, which includes but is not necessarily limited to construction costs, right-of-way acquisition costs, engineering costs, interest, and such documented related costs, LESS the proportionate share of all grants, subsidies, and monies paid on behalf of the project contemplated herein related to the "Water Main" part of the project herein.

- An item (g) will be added to read as follows:

BRUNO agrees to pay an agreed cost, a connection fee to connect to the LPNNRD's water supply system, the sum of _____ dollars, which shall cover any and all costs of the seller for installation of the metering equipment and "Water Main" and Water Line". Bruno will assign all easements and professional service contracts related to the development of this water supply system over to LPNNRD. LPNNRD agrees to assume the remaining financial obligations and liabilities of these easements and contracts as agreed upon by Bruno and LPNNRD. BRUNO is liable for unscheduled engineering and legal fees which LPNNRD offered to perform prior to their execution. Above and beyond these fees, Bruno will have no further liability upon assignment.

BRUNO and the LPNNRD will enter into a separate "WATER PURCHASE CONTRACT", which will outline the terms and conditions of the sale and purchase of water between LPNNRD and BRUNO. All the covenants contained in such Water Purchase Contract, will govern the sale and purchase of water between LPNNRD and BRUNO. Any section, paragraph, clause or provision of the Agreements or Amended Agreement which are in conflict or inconsistent with the terms, conditions and covenants contained in the Water Purchase Agreement, are hereby canceled, rescinded, and repealed.

2. Governing Law. This agreement in all respects shall be governed by and conform with the provisions of the interlocal Cooperation Act (Neb. Rev. Stat. 13-801 et seq.)

IN WITNESS WHEREOF, the parties have set their hand by their respective chairpersons upon the date shown by each and this Amended Agreement shall become fully binding upon all participants on the last date of the last party to execute this agreement.

BRUNO:	DAVID CITY:	LPNNRD:
By: _____ Mayor of the City	By: _____ Chairperson of the Board	By: _____ Chairman of the Board
By: _____ Village Clerk	By: _____ City Clerk	By: _____ General Manager
(SEAL)	(SEAL)	(SEAL)

Mayor Smith declared the Public Hearing open at 7:49 p.m concerning an application for Economic Development Reuse Funds. Doug Johnson, President of Johnson Aero Ag. Inc., was present and reported that he is committed to maintaining and increasing his business in David City. His initial purchase of Harms Aviation some time ago has allowed him to work with existing clientele and develop additional clientele in this area. His plans are to increase his capacity for spraying and treating various crops in this area. A change in aircraft is necessary in order to do that. This project will include additional staff for various needs including accounting, office work, material handling, and general maintenance of the plane and premises in order to accomplish

his sales and service goals. He will employ approximately 4 to 5 seasonal employees; working 60 hrs to 80 hrs, 7 days per week, which would be about the equivalent of 2 full-time employees on a yearly basis. Council member Schatz questioned if Johnson had enough insurance in case there was an unfortunate air mishap or a catastrophe. Johnson stated that he has 2 forms of insurance; one similar to full auto coverage and a life insurance policy payable to debtors. The City should obtain a copy of the insurance policies. City Administrator Fiegenschuh stated that approval of this application for \$80,000 means that only \$9,000 will be left in the reuse account. Council member Schatz questioned what happens if we receive another application that meets the specifications for a new business or to expand a present business. Fiegenschuh stated that the City could request additional Economic Development Funds as long as the request is for a specific business; can't just ask for money to replenish the account. There being no further comments, Mayor Smith declared the Public Hearing closed at 8:00 p.m..

Council member Hein made a motion to authorize \$80,000 in Economic Development Re-use Funds to Douglas D. Johnson, President of Johnson Aero Ag. Inc.. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mayor Smith declared the Public Hearing open at 8:01 p.m. to consider the one-year and six-year street improvement program. Street Superintendent Jim McDonald presented the following:

One-Year Street Plan

Montag Avenue in the trailer park
Ohio Street from 5th to 7th
3rd Street from "A" to Iowa Street
6th Street from Nebraska to Kansas
Iowa Street from 2nd Street to Hwy 15
6th Street from Nebraska to "C" Street
Nebraska Street between 5th to 6th Streets

Six-Year Plan

8th Street from "D" to "E"
10th Street from "E" to Railroad
8th St. from "J" to "K"
"B" Street from 7th to 8th
Nebraska from 4th to 5th
"M" Street from 5th to 6th
"M" Street from 8th to 9th
Oak Street from "C" to "D"
9th Street from "E" to Railroad Tracks
10th Street from Nebraska to "A" St.
"I" Street from 7th to 9th
"G" Street from 7th to 9th
"M" Street from 9th to 10th

“L” Street from 8th to 9th
1st Street from “D” to “E”
“L” Street from 10th to 11th
“L” Street from 11th to 12th
“H” Street Railroad tracks west
Industrial Rd. from “O” to “S”
Park Road by Tennis Courts
5th Street from Kansas St. to Park Rd.
10th Street from Iowa to Kansas

Street Superintendent McDonald stated that it should be the goal of the council to have all curb and gutter streets as that would help alleviate some drainage issues. McDonald stated that the drainage is really bad at 10th & “A” Streets. There being no further comments, Mayor Smith declared the Public Hearing closed at 8:15 p.m..

Council member Smith introduced Resolution No. 2 - 2005 and moved for its passage and adoption. Council member Hein seconded the motion. Voting YEA: Council members Lukassen, Kirby, Kroesing, Schatz, Hein, and Smith. Voting NAY: None. The motion carried and Resolution No. 2 - 2005 was passed and adopted as follows:

RESOLUTION NO. 2 - 2005

WHEREAS, The City of David City, Nebraska, has conducted a Public Hearing on February 9, 2005, in accordance with the requirements of the Board of Public Roads Classifications and Standards.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the One-Year and Six-Year Street Improvement Plans for Streets, as presented at the public hearing, are unanimously accepted and the City Clerk is hereby instructed to forward a certified copy of this resolution to the Board of Public Roads Classification and Standards of the State of Nebraska.

PASSED AND APPROVED this 9th day of February, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Kirby made a motion to advance to agenda item #13 - Consideration of three different painting alternatives for the new water tower. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

The Council considered the following water tower painting alternatives:

Alternative 1a: Fountainbleu (25BL) exterior tank color
Black block lettering, 2 sides, “David City”
American Flag 15' long by 10' high, clear coat
Additional cost: \$7,610
Additional days: 5

Fountainbleu (25BL) exterior tank color
Black block lettering, 1 side, “David City”
American Flag 15' long by 10' high, clear coat

Additional cost: \$6,720
Additional days: 5

Alternative 1b: Fountainbleu (25BL) exterior tank color
Black block lettering, 2 sides, "David City"
American Flag 18' long by 12' high, clear coat
Additional cost: \$8,820
Additional days: 5

Fountainbleu (25BL) exterior tank color
Black block lettering, 1 side, "David City"
American Flag 18' long by 12' high, clear coat
Additional cost: \$7,928
Additional days: 5

Alternative 2: Fountainbleu (25BL) exterior tank color
Black block lettering, 2 sides, "David City"
Cost: \$0
Additional days: 0

Alternative 3: Hunter Green (08SF) exterior tank color
Clear coat entire tank for color protection
White block lettering, 2 sides, "David City"
Cost: \$15,986
Additional days: 7

Fiegenschuh stated the grant will not cover the extra costs associated with some of the alternatives and we are already over \$60,000. Council member Kirby made a motion to approve Alternative 2. Council member Schatz seconded the motion. Council member Kroesing stated that besides him being very patriotic, this an opportunity for David City to make a statement for years to come. Kroesing stated he would like to issue a challenge; He will donate \$100 each for his wife, son, and himself to put an American flag on the water tower. A notice could be placed in the Banner Press that the City is collecting donations in order to put an American Flag on the new water tower. Therefore, Council members Kirby and Schatz withdrew their motions. As a decision is needed by the end of the month, the Council agreed that instead of adjourning at the end of the meeting they could recess until November 28th, with a decision made at that time concerning the water tower design.

Council member Kirby made a motion to advance to agenda item #18 - Consideration of a Resolution providing support to the B.C. Emergency Managements Homeland and Security Grant Application. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Lukassen made a motion to pass and adopt Resolution No. 3-2005. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. Resolution No. 3-2005 was passed and adopted as follows:

RESOLUTION NO. 3 - 2005

WHEREAS, The City Council of David City, Nebraska, has reviewed the grant process and application on behalf of the 1st responders in Butler County, and

WHEREAS, there is a list of equipment and items that would aide the first responders of

our county.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that in order to provide for a coordinated grant application on behalf of the 1st responders in Butler County, the City Council of David City has reviewed the grant process and application and has approved the Butler County submittal to the State of Nebraska for 2005 Grant funding.

PASSED AND APPROVED this 9th day of February, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Mayor Smith declared a recess at 8:45 p.m.. The meeting resumed at 9:00 p.m..

Mayor Smith called for Committee and Officers' Reports in addition to those written reports contained in the Agenda packet.

The Council questioned a letter received as follows:

Dear Mr. Fiegenschuh:

Re: Claim of Dick & Elsie Grubaugh, and Patricia Romshek

Please be advised that this office represents the interest of Dick and Elsie Grubaugh and Patricia Romshek, owners of certain land in or near the city limits of David City, Nebraska. By informal agreement, the City of David City has used the property for snow removal purposes and annually cleared and graded the property.

It has come to the attention of the owners that a certain culvert used for purposes of a roadway on this private property was removed by the city and has not been replaced. I have also been advised that the city is now claiming it does not have sufficient reserves to purchase a culvert and repair the property. Therefore, this matter has been turned over to me for appropriate legal action.

Before taking any action, we would ask that the city reconsider its position and that the city acquire a 48" x 40' culvert to be placed on the property. My clients would agree to do all of the dirt work and would ask that you merely acquire the culvert and deliver same to the subject premises and my clients would be willing to do the remaining work.

My clients wish to avoid a dispute, but can't believe the city would have actually taken out the culvert without permission on my clients property and without making appropriate arrangements to replace and repair same. Please give this matter your further consideration and respond to me with your decision.

*Very truly yours,
Richard T. Seckman
Attorney at Law*

Street Superintendent Jim McDonald stated that this property was referred to as the Grubaugh Sale Yard and is located between Oak Street and County Rd. M and between "D" Street and the Union Pacific Railroad. McDonald said he told Dick Grubaugh about 1 year ago

that the culvert in question had collapsed and needed to be replaced. There is a public water way that travels through this property and McDonald didn't want the storm sewer to back up in peoples basements because of the collapsed culvert. McDonald stated the culvert was removed in January, prior to the property being sold to Mark Holoubek. In the past the Grubaugh's had purchased the culvert and the City installed it. Therefore, McDonald had informed the Grubaugh's that they would have to purchase the new culvert. This issue will need to be investigated further.

City Administrator Fiegenschuh reported the following:

- The Swimming Pool ad for managers will be in the Banner Press on February 9th and 16th;
- Legislative Bills #356 and #109 are important because they would allow cities to exempt capital improvements from the property tax levy limits and would change the levy limitations for cities from a maximum of forty-five cents to ninety cents per one hundred dollars of taxable valuation of property. Letters were written to Senators Dave Landis and Chris Langemeier asking for their support of these bills;
- The invoice for \$400.00 for checking the Auditorium furnace will be charged to the Contingency Fund as this was not budgeted for in the Auditorium budget;
- The Comp Plan update meeting is scheduled for Monday, February 21st at 6:00 p.m.;

Mayor Smith scheduled a Committee of the Whole meeting for Monday, February 28, 2005 at 6:00 p.m. in the City Office meeting room.

Council member Hein made a motion to accept the Committee and Officers' Reports as presented. Council member Kirby seconded the motion. Voting YEA: Council members Smith, Schatz, Lukassen, Kroesing, Kirby, and Hein. Voting NAY: None. The motion carried.

Chief Deputy State Fire Marshal Don Fritz was present to discuss Ordinance No. 989 amending Chapter 7 of the Municipal Code Book of David City, Nebraska. Fritz suggested several changes as indicated. Council member Schatz made a motion to table Ordinance No. 989 to the March 9th council meeting. Council member Kroesing seconded the motion. Voting YEA: Council members Lukassen, Smith, Hein, Kirby, Kroesing, and Schatz. Voting NAY: None. The motion carried.

ORDINANCE NO.

989

AN ORDINANCE AMENDING CHAPTER 7: FIRE REGULATIONS OF THE DAVID CITY MUNICIPAL CODE BOOK; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA:

Section 1. Chapter 7: Fire Regulations of the David City Municipal Code Book be amended to read as follows:

Chapter 7
FIRE REGULATIONS

Article 1. Fire Prevention

§7-101 FIRE PREVENTION; ADOPTION OF UNIFORM FIRE CODE. There is hereby adopted by the City of David City, Nebraska, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion that certain Code and Standards known as the Uniform Fire Code Standards which Code makes reference to the National Fire Code, published by Western Fire Chiefs' Association and the International Conference of Building Officials, being the current editions thereof and the whole thereof, except such portions as are hereinafter deleted, modified or amended by this Chapter, of said Code and Standards.

One (1) copy is on file with the City Clerk of the City of David City, Nebraska. These Codes are hereby adopted and incorporated as fully as if set out at length, herein, and from the date on which this Chapter shall take effect, the provisions of these Codes shall be controlling within the limits of the City of David City, Nebraska. (Ref. 18-132, 19-902, 19-922, ~~81-502~~ RS Neb.)

§7-102 FIRE PREVENTION; DEFINITIONS.

- a. The word "jurisdiction" used in the Uniform Fire Code, means the zoning jurisdiction of the City of David City.
- b. The term "Municipal official" means all elected and appointed officials of the City of David City.

§7-103 FIRE PREVENTION; OFFICERS RESPONSIBLE FOR CODE ENFORCEMENT.

- a. Inspection under the Uniform Fire Code shall be accomplished principally by the Zoning Administrator, the Fire Chief, Police Chief, and the Police Officers.
- b. For special or unusual situations the Zoning Administrator or the Fire Chief may recommend to the City of David City the employment of special technical inspectors to improve the enforcement of these codes.

§7-104 FIRE PREVENTION; FIRE LIMITS DEFINED. The following described territory in the Municipality shall be and constitute the fire limits:

The corporate limits of the City of David City, Nebraska
as they exist from time to time

§7-104.01 FIRE PREVENTION; STORAGE OF FLAMMABLE OR COMBUSTIBLE LIQUIDS PROHIBITED. The storage of flammable or combustible liquids in outside aboveground tanks is prohibited within the Residential, Public, Semi-Public and Park areas. (Ref. 17-137 RS Neb.) (*Fritz questioned what size tanks?*)

§7-104.02 FIRE PREVENTION; STORAGE OF LIQUEFIED PETROLEUM RESTRICTED. In the zones where storage of liquefied petroleum is permitted, the provision of the Uniform Fire Code shall govern. Liquefied petroleum may be stored in areas that are (zoned I-2, I-1, and B-2). (Ref 17-137 RS Neb.) (**We don't have this zoning.**)

§7-104.03 FIRE PREVENTION; STORAGE OF EXPLOSIVES AND BLASTING AGENTS PROHIBITED. No areas are zoned to permit the storage of explosives and blasting agents except as regulated in Section 77.106(b) of the Uniform Fire Code. (Ref. 17-

137 RS Neb.)

§7-105 **FIRE PREVENTION; PERMIT FOR HAZARDOUS MATERIALS.** Hazardous materials may be stored within the Commercial and Industrial zones referred to in Section 7-104 provided that all such materials are identified as to kind, amount, location and other data concerning said materials in "Application to Store Hazardous Material" (made annually on August 1), or on the date when such materials are initially placed in the City, to the Fire Chief and the Zoning Administrator, which application must be made by the person in control of such materials. "Application to Store Hazardous Materials" shall be made in duplicate to the Fire Chief and Zoning Administrator (on forms supplied by the City) and kept on file in the Fire Department. (Ref. 17-137 RS Neb.) ***(We have never had forms and nothing is identified annually).***

§7-106 **FIRE PREVENTION; BURNING REGULATIONS WITHIN FIRE LIMITS.** Within the prescribed fire limits, burning is allowed in incinerators that conform to the standards hereinafter set forth. An approved City permit must be issued for the incinerator prior to its use.

Barrels, steel cans, masonry boxes, whether covered or not, are not classified as incinerators. Boilers and wood burning stoves may be used as outside commercial incinerators only if they substantially meet the requirements hereinafter set forth specifically including the requirements of spark arresters and foundations.

Incinerators to be used inside buildings shall conform to the standards as specified in the Codes adopted in Section 7-101.

Outside commercial incinerators for use in the fire limits shall, as a minimum, be constructed of steel plate not less than three-sixteenths (3/16) inches in thickness. The base or burning area of the incinerator may not exceed sixteen (16) square feet in area. All joints and seams of the incinerator must be welded together, except for access doors. There be no more than two (2) access doors for each incinerator. The base walls or burning area of the incinerator must have at least six (6), but not more than ten (10) ventilation holes in each wall of the incinerator base. The holes shall not be greater than one (1") inch in diameter. The base or burning area of the incinerator must be covered with a chimney with an opening not to exceed one (1) square foot in diameter. Chimneys shall be connected to the incinerator base or burning area as noted above. The terminating point of the chimney shall extend above the incinerator base or burning area the same distance as the height of the incinerator base or burning area. The chimney must terminate in a steel, or substantially constructed, spark arrester having mesh openings of not more than one half (1/2") inch in diameter or one-quarter (1/4") inch mesh. Spark arresters must cover the entire chimney opening. Incinerators may have a hole, not to exceed nine (9) square inches, in the bottom of the incinerator base.

Outside commercial incinerators must meet the location standards of Section 7-107.02. Inside incinerators shall be approved by an independent testing or rating agency and must conform to the Codes adopted in Section 7-101. (Ref. 17-549, 17-556, ~~81-520-02~~ RS Neb.) (Amended by Ord. No. 644, 9/25/85)
(Fritz questioned if the incinerators meet the standards of the Department of Environmental Quality?)

§7-107 **FIRE PREVENTION; BURNING AND FIRES PROHIBITED; EXCEPTION AND REGULATIONS.** All open burning and open fires in the City are prohibited, except;

in barbecues, outdoor fireplaces or with written permission of the Fire Chief for a particular event. Approved containers may be used for burning of materials that do not give off toxic gases or fumes, offensive or foul odors, or dirty or oily smoke. Permitted materials **(to be burned)** include paper, cardboard, wood, etc.. Prohibited materials include feathers, meat, tires, oil or other noxious material **(including household garbage)**. ***(Fritz thought this should also require council approval)*** (Ref. 17-549, 17-556, ~~81-520.01~~ RS Neb.) (Amended by Ord. No. 644, 9/25/85)

§7-107.01 FIRE PREVENTION; DESIGN OF CONTAINERS FOR AREAS OTHER THAN THE FIRE LIMITS. For areas other than the fire limits, steel containers, as hereinafter defined, shall be used. Steel containers for burning in areas other than the fire limits are defined as follows: A steel container used for burning must have a volume of at least thirty (30) gallons and not more than sixty (60) gallons. The container must be held above the ground at least 4" to 6" by steel, concrete or masonry material in a stable, plumb manner. It must have six (6) but not more than ten (10) holes in the walls, the diameter of which shall be not more than one (1") inch, all located in the lowest ten (10%) per cent of the sidewalls. There must be a woven or punched metal cover over the top of the container with opening not more than one half (½") inch by one half (½") inch. The cover must be larger in area than the top of the container and must be secured to the container by chains, hinges, or other suitable device. The cover must be visible for inspection to ensure compliance with these provisions. (Ref. 17-549, 17-556, ~~81-520.01~~ RS Neb.) (Amended by Ord. No. 644, 9/25/85) ***(Fritz thought this could be a liability issue)***

§7-107.02 FIRE PREVENTION; LOCATION OF CONTAINERS. Containers used for burning must be placed on the property where the user resides and may not be located in a public alley, street, or right-of-way. Containers shall be placed on steel, concrete, or masonry support four (4") inches to six (6") inches high in a plumb manner and on a site where all vegetation and/or combustible material is removed in all directions for a distance of four feet (4') measured from the edge of the container; at least ten feet (10') from any building, garage or shed; at least six feet (6') distance from any utility pole, ground-level transformer or telephone pedestal; a distance of twenty feet (20') measured at the closest point, away from any overhead utility wires or cables; a distance of at least twenty feet (20') from the branches of any tree; and in general; in a manner so as to provide protection to other properties. (Ref. 17-549, 17-556, ~~81-520.01~~ RS Neb.) (Amended by Ord. No. 644, 9/25/85)

§7-107.03 FIRE PREVENTION; HOURS PERMITTED. Burning is permitted from seven o'clock (7:00) a.m. to six o'clock (6:00) p.m. from Monday through and including Saturday. No burning is permitted on Sunday. (Ref. 17-556, ~~81-520.01~~ RS Neb.) (Amended by Ord. Nos. 644, 9/25/85; 765, 11/12/92)

Article 2. Fires

§7-201 FIRES; AUTHORITY OF FIRE CHIEF. When there is a fire, the Fire Chief or the designated Firemen in charge, shall have the authority to do all things that are, in his judgement, necessary to protect life and property in the area adjacent to the fire. (Ref. 17-147 RS Neb.)

§7-201 **FIRES; ASSISTANCE.** It shall be unlawful for any person to refuse, after receiving a command of the Fire Chief or Assistant Fire Chief, to aid in extinguishing a fire or to assist in the removal and protection of property. (Ref. 28-908 RS Neb.)

§7-203 **FIRES; SPECTATORS.** During the time of a fire, it shall be unlawful for any person to hinder, resist or refuse to obey the Municipal Fire Chief, or to act in a noisy or disorderly manner. The Fire Chief and Assistant Fire Chief shall have the power and authority, while fighting a fire and for a period of thirty-six (36) hours after its extinguishment, to command any such person to assist them in the performance of their official duties. (Ref. 28-908 RS Neb.)
(Fritz suggested adopting language directly from the State Statute)

§7-204 **FIRES; TRAFFIC.** No vehicle, except by the specific direction of the Fire Chief or Assistant Fire Chief, shall follow, approach, or park closer than five hundred feet (500') to any fire vehicle, or to any fire hydrant to which a hose is connected. Nothing herein shall be construed to apply to vehicles carrying doctors, members of the Fire Department, or emergency vehicles. (Ref. 39-753 RS Neb.)

§7-205 **FIRES; PEDESTRIANS.** It shall be unlawful for any pedestrian to enter upon or remain in any street or roadway within a distance of three hundred feet (300') from a fire when fire fighting vehicles are approaching or are present at the scene of a fire. (Ref. 28-908 RS Neb.)

§7-206 **FIRES; FALSE ALARMS.** It shall be unlawful for any person to intentionally and without good and reasonable cause raise any false alarm of fire. (Ref. 28-907 RS Neb.)

§7-207 **FIRES; DROP CEILINGS; REMOVAL OF TIN CEILING COVERINGS; UNLAWFUL INSTALLATION.** It shall be unlawful to install a drop ceiling in a room or rooms of a commercial building within the City limits with a tin and/or metal ceiling covering without:

1. First removing such tin and/or metal ceiling covering before installation of the drop ceiling; or
2. Installing a fire sprinkler system. All sprinkler systems installed, from this date, shall comply with the ~~David City Fire Codes:~~ **(Fritz suggested State Fire Marshal codes. The following a. thru f. do not meet minimum Fire Marshal regulations:**
 - a. Having a static flow test to determine the water pressure;
 - b. Determining the minimum number of heads required, with each head covering the square footage specified in the 1990 Factory Mutual System pocket guide to automatic sprinklers;
 - c. Installing a back-flow device;
 - d. Placing the sprinkler heads below the suspended ceiling;
 - e. Sprinkler heads shall also be installed in basements when the building is being remodeled by at least fifty percent (50%) of its assessed value;
 - f. Having a pre-approved plan.

(Ord. No. 787, 12/20/93) (Amended by Ord. No. 789, 7/13/94)

Article 3. Penal Provision

§7-301 VIOLATION; PENALTY. Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred dollars (\$100.00) for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

Section 2. Any other ordinance or section passed and approved prior to passage, approval, and publication or posting of this ordinance and in conflict with its provisions is repealed.

Section 3. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage as provided by law.

Passed and approved this _____ day of _____, _____.

Tabled 2nd rdg to March 9th council meeting
Mayor Stephen Smith

Tabled 2nd rdg to March 9th Council meeting
City Clerk Joan E. Kovar

City Administrator Fiegenschuh explained that he is suggesting a 3% occupation fee on all gross utility sales from the water, sewer, and electric departments. He explained that this would be the same as a transfer from the utility funds to the general fund. Council member Kroesing questioned how the Council was going to justify these rates; "if we were running short on reserves why didn't someone bring it to our attention?" Council member Schatz stated that expenses were being paid out of the Contingency Fund which came directly out of the reserve funds: "I think staff people did mention it but it's not up to them." The budget committee consisting of Council members Schatz, Smith, and Hein, City Administrator Fiegenschuh, and City Clerk Kovar met on February 3rd to discuss this issue. Schatz stated that the city is being run fugal and if we want these city services we need to look at alternative methods of revenue. Schatz stated that he would rather see an occupation fee than to have to cut departmentally; "These are factual numbers." Schatz also stated that he feels that the City Clerk/Treasurer should take a larger role in the budget. Schatz stated the City needs to be run like a business; it needs to be self sufficient; "the current 1% sales tax, which ceases October 2010, is in no way going to pay the operation and maintenance on the new swimming pool; "imposing an occupation tax is a gut retching decision as a Council member, but how else do we fund these services and pay for capital improvement items?"

Council member Kirby made a motion to table consideration of a resolution incorporating an occupation fee until the March 9th council meeting. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

RESOLUTION NO. _____ - 2005

WHEREAS, The City of David City, Nebraska, has conducted budget committee meetings, and,

WHEREAS, it has been determined that an occupation fee of 3% on all utility rates would be conducive in balancing the budget and building the City's reserves.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that a 3% occupation fee be charged on all utility (electric, water, and sewer) rates effective October 1, 2005.

PASSED AND APPROVED this ____ day of _____, _____.

Tabled to March 9th council meeting
Mayor Stephen Smith

Tabled to March 9th Council meeting
City Clerk Joan E. Kovar

Council member Schatz introduced Ordinance No. 990 and made a motion to pass Ordinance No. 990 on the first reading only. Council member Hein seconded the motion. Voting YEA: Council members Kroesing, Kirby, Smith, Lukassen, Hein, and Schatz. The motion carried and Ordinance No. 990 was passed on 1st reading as follows:

ORDINANCE NO. 990

AN ORDINANCE RELATING TO ELECTRIC SERVICE RATES AND MINIMUM CHARGES, TO PROVIDE A NEW SCHEDULE OF ELECTRIC RATES, MINIMUM CHARGES, AND CUSTOMER SERVICE CHARGES, TO DISTINGUISH RESIDENTIAL RATES, COMMERCIAL RATES, INDUSTRIAL RATES, OFF-PEAK INDUSTRIAL RATES, AND IRRIGATION RATES, TO SET AVAILABILITY RATING; TO REPEAL ALL PARTS OF THE CODE, RESOLUTIONS AND ORDINANCES IN CONFLICT HEREWITH; TO PROVIDE WHEN THE ORDINANCE SHALL TAKE EFFECT; AND TO PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA:

Section 1. NEW SCHEDULE: Relating to electric service and minimum charges, to provide a schedule of electric rates, minimum charges, and customer service charges, to distinguish residential rates, commercial rates, industrial rates, off-peak industrial rates, and irrigation rates; to set availability rating; to provide and establish the following tariff of rates to consumers of electric service from the electric distribution system of the City of David City, Nebraska.

RESIDENTIAL SERVICE

Available

To residential customers in the established service area of David City.

Applicable

To single-family residences and individually metered apartments for all domestic purposes when all service is supplied through a single meter. It is not applicable to residences where a commercial enterprise is conducted.

Character of Service

A.C. 60 Hertz, Single-Phase 120 volt, 2 wire or 120/240 volts, 3 wire.

Rate

Customer Service Charge - \$7.40 per month (or partial month)

Summer	Winter	
\$0.0765	\$0.0753	per kilowatt-hour for the first 500 kilowatt-hours used per month
\$0.0686	\$0.0519	per kilowatt-hour for the next 500 kilowatt-hours used
\$0.0607	\$0.0343	per kilowatt-hour for all additional use.

Subject to Application of Production Cost Adjustment

(PCA)

Minimum Bill

Customer Service Charge

RESIDENTIAL SUMMER CONTROLS

Applicable

To residential consumers who have allowed the Utility Department to install, and operate, such devices as would be required to cycle central air conditioning units during periods of peak electrical demand and imposed upon the electrical system. Window air conditioning units, on a separate electric circuit can be included in this rate.

Rate

Customer Service Charge - \$7.40 per month

Summer	Winter	
\$0.0765	\$0.0753	per kilowatt-hour for the first 500 kilowatt-hours used per month
\$0.0633	\$0.0519	per kilowatt-hour for the next 500 kilowatt-hours used
\$0.0580	\$0.0343	per kilowatt-hour for all additional use.

Subject to Application of Production Cost Adjustment

(PCA)

Minimum Bill

Customer Service Charge

Seasonal Billing Periods

Summer - Summer period is for the meter readings obtained during the four month period of June through September.

Winter - Winter period is for the meter readings obtained during the eight month period of October through May.

Terms of Payment

Utility bills are mailed on approximately the 25th day of each month and are payable upon receipt. They become due the 1st day of each month and become delinquent if not received in

the City Office by 5:00 p.m. on the 10th day of the month. If the 10th of the month falls on a week-end, customers will be given the following regular business day. A ten percent (10%) penalty is imposed on all delinquent bills.

COMMERCIAL SERVICE

Available

To any non residential consumer in the established service area of David City.

Applicable

To any non-residential consumer for lighting, heating and power purposes where the customer's billing demand does not exceed 35 Kw or 10,000 Kwh for three consecutive months.

Character of Service

A.C. 60 Hertz, single-phase or three-phase at any of the Cities standard voltages.

Single Phase Rate

Customer Service Charge - \$7.40 per month (or partial month)

Summer	Winter	
\$0.0853	\$0.0837	per kilowatt-hour for the first 1000 kilowatt-hours used per month
\$0.0666	\$0.0586	per kilowatt-hour for the next 1000 kilowatt-hours used
\$0.0666	\$0.0471	per kilowatt-hour for all additional use.

Subject to Application of Production Cost Adjustment

(PCA)

Minimum Bill

Customer Service Charge, or \$1.75 per month per horsepower for the first 10 horsepower and \$1.00 per horsepower of connected load thereafter, or whichever is the largest.

Three Phase Rate

Customer Service Charge - \$14.80 per month (or partial month)

Summer	Winter	
\$0.0853	\$0.0837	per kilowatt-hour for the first 1000 kilowatt-hours used per month
\$0.0666	\$0.0586	per kilowatt-hour for the next 1000 kilowatt-hours used
\$0.0666	\$0.0471	per kilowatt-hour for all additional use.

Subject to Application of Production Cost Adjustment

(PCA)

Minimum Bill

Customer Service Charge or \$1.75 per month per horsepower for the first 10 horsepower and \$1.00 per horsepower of connected load thereafter, or whichever is the largest.

Seasonal Billing Periods

Summer - Summer period is for the meter readings obtained during the four month period of

June through September.

Winter - Winter period is for the meter readings obtained during the eight month period of October through May.

Terms of Payment

Utility bills are mailed on approximately the 25th day of each month and are payable upon receipt. They become due the 1st day of each month and become delinquent if not received in the City Office by 5:00 p.m. on the 10th day of the month. If the 10th of the month falls on a week-end, customers will be given the following regular business day. A ten percent (10%) penalty is imposed on all delinquent bills.

Power Factor Adjustment

The rates set forth in this schedule are based on the maintenance by the customer of a power factor of not less than 90% leading or lagging at all times. If it is determined by test that the power factor at the time of the Customer's peak load is less than 90%, the Utility Department, at its option, may correct the power factor of the Customer's load at the expense of the Customer.

INDUSTRIAL SERVICE

Available

To any non residential consumer in the established service area of David City.

Applicable

To any consumer whose monthly consumption equals or exceeds 10,000 Kwh and whose monthly peak demand equals or exceeds 35 Kw for three consecutive months.

Character of Service

A.C. 60 Hertz, single-phase or three-phase at any of the Cities standard voltages.

Rate

Demand Charge

Summer

\$15.50 per kilowatt of maximum billing demand

Winter

\$12.10 per kilowatt of maximum billing demand

Energy Charge

Summer

\$0.0319 per kilowatt-hour used

Winter

\$0.0262 per kilowatt-hour used

Subject to Application of Production Cost Adjustment

(PCA)

Minimum Bill

The minimum bill shall be \$292.00 per month, or the billing demand charge, whichever is greater.

Determination of Billing Demand

The maximum demand for any billing period shall be the larger of: The highest integrated kilowatt load registered on the meter during any thirty (30) minute period occurring in the billing period; or fifty four percent (54%) of the highest kilowatt demand registered on the meter during the preceding months of June, July, August, or September.

Seasonal Billing Periods

Summer - Summer period is for the meter readings obtained during the four month period of June through September.

Winter - Winter period is for the meter readings obtained during the eight month period of October through May.

Terms of Payment

Utility bills are mailed on approximately the 25th day of each month and are payable upon receipt. They become due the 1st day of each month and become delinquent if not received in the City Office by 5:00 p.m. on the 10th day of the month. If the 10th of the month falls on a weekend, customers will be given the following regular business day. A ten percent (10%) penalty is imposed on all delinquent bills.

Power Factor Adjustment

The rates set forth in this schedule are based on the maintenance by the customer of a power factor of not less than 90% leading or lagging at all times. If it is determined by test that the power factor at the time of the Customer's peak load is less than 90%, the Utility Department, at its option, may correct the power factor of the Customer's load at the expense of the Customer.

Fluctuating Loads

Customers operating equipment having a highly fluctuating or large instantaneous demand, such as welders and X-ray machines, shall be required to isolate these loads from the balance of the electric system if they unduly interfere with service on the lines. The customer shall be required to pay all nonbetterment costs for corrective equipment to eliminate the interference.

OFF-PEAK INDUSTRIAL SERVICE

Available

To any non residential consumer in the established service area of David City.

Applicable

To any consumer whose monthly consumption equals or exceeds 10,000 Kwh and whose monthly peak demand equals or exceeds 35 Kw for three consecutive months and whose peak demand during the winter season exceeds the peak demand experienced during the preceding summer season.

Character of Service

A.C. 60 Hertz, single-phase or three-phase at any of the Cities standard voltages.

	<i>Rate</i>
Demand Charge	
Summer	\$15.50 per kilowatt of maximum billing demand
Winter	\$ 7.90 per kilowatt of maximum billing demand
Energy Charge	
Summer	\$0.0319 per kilowatt-hour used
Winter	\$0.0262 per kilowatt-hour used
	Subject to Application of Production Cost Adjustment
(PCA)	

Minimum Bill

The minimum bill per month shall be **\$266.00** during the winter months, or the billing demand charge, whichever is greater.

The minimum bill per month shall be **\$292.00** during the summer months, or whichever is the greater between the billing demand or the summer/winter minimum.

Determination of Billing Demand

The maximum demand for any billing period shall be the larger of: The highest integrated kilowatt load registered on the meter during any thirty (30) minute period occurring in the billing period; or fifty four percent (54%) of the highest kilowatt demand registered on the meter during the preceding months of June, July, August, or September.

Seasonal Billing Periods

Summer - Summer period is for the meter readings obtained during the four month period of June through September.

Winter - Winter period is for the meter readings obtained during the eight month period of October through May.

Terms of Payment

Utility bills are mailed on approximately the 25th day of each month and are payable upon receipt. They become due the 1st day of each month and become delinquent if not received in the City Office by 5:00 p.m. on the 10th day of the month. If the 10th of the month falls on a week-end, customers will be given the following regular business day. A ten percent (10%) penalty is imposed on all delinquent bills.

Power Factor Adjustment

The rates set forth in this schedule are based on the maintenance by the customer of a power factor of not less than 90% leading or lagging at all times. If it is determined by test that the power factor at the time of the Customer's peak load is less than 90%, the Utility Department, at its option, may correct the power factor of the Customer's load at the expense of the Customer.

Fluctuating Loads

Customers operating equipment having a highly fluctuating or large instantaneous demand, such as welders and X-ray machines, shall be required to isolate these loads from the balance of the electric system if they unduly interfere with service on the lines. The customer shall be required to pay all non-betterment costs for corrective equipment to eliminate the interference.

IRRIGATION SERVICE

Available

To irrigation customers in the established service area of David City.

Applicable

Applicable: **Off-Peak:** During the irrigation season, the utility may interrupt pump service during the peak hours. The peak hours shall be between 10:30 a.m. and 9:30 p.m. (Central Daylight Savings Time), Monday thru Saturday, excluding holidays. The City, at their sole discretion may change the period of interruptible hours.

Rate: On-peak irrigation (Firm)

\$37.20 per Horsepower connected per year. Energy consumed shall be billed at the rate of 5.74¢ per kilowatt hour per month, payable as used.

Rate: Off-peak irrigation (Non-Firm)

\$15.90 per Horsepower connected per year. Energy consumed shall be billed at the rate of 3.61¢ per kilowatt hour per month, payable as used.

Minimum Bill

The minimum bill shall be the Horse Power Charge

Determination of Connected Load

The connected load in horsepower shall be taken from the name plates of the motors or from an actual measurement of horsepower input to the motor, or motors, operating under maximum load conditions. The City reserves the right at any time to check the customer's load for recalculation of the connected load.

Terms of Payment

The total horsepower charge shall be billed on approximately April 25th of each year and total amount payable upon receipt. It shall become due the first day of May each year and become delinquent at 5:00 p.m. on the 10th day of May. A ten percent (10%) penalty is imposed on all delinquent bills.

Bills for the kwh usage are mailed on approximately the 25th day of each month and are payable upon receipt. They become due the 1st day of each month and become delinquent at 5:00 p.m. on the 10th day of each month. A ten percent (10%) penalty is imposed on all delinquent bills.

Power Factor Adjustment

The rates set forth in this schedule are based on the maintenance by the customer of a power factor of not less than 90% whether leading or lagging at all times. Power factor adjustments will be made in the horsepower billing, when the power factor, as determined by test, at the time of the maximum use is less than 90%. The measured maximum horsepower will be multiplied by 90 percent and divided by the customer's power factor expressed in percent.

FLUCTUATING LOADS

Customers operating equipment having a highly fluctuating or large instantaneous demand, such as welders and X-ray machines, will be charged \$1.58 per month per KVA of such nameplate rating of such equipment or other equipment for energy used, and such charges will be in addition to the bill determined by the kilowatt hours recorded by the meter and billed at scheduled rates. It will be added to the minimum bill for services in the event the energy for other services does not equal the amount of a minimum bill for such other services.

Section 3. **RATE MODIFICATION**: Whereas the rates offered to the customer by the City is based upon the current rate being paid by the City to its wholesale supplier, the City shall reserve the right, during the term of the rates, to adjust said rates to the consumer by an amount not to exceed two (2) mills per kilowatt hour greater than the adjustment to the City by its wholesale supplier.

Section 4. That all rates in Ordinances and Resolutions in conflict herewith are hereby repealed.

Section 5. This ordinance shall be published in pamphlet form and all rates included in this Ordinance shall be effective as of _____.

PASSED AND ADOPTED this ____ day of _____, 2005

Passed on 1st reading only 2-09-05
Mayor Stephen Smith

Passed on 1st reading only 2-09-05
City Clerk Joan E. Kovar

Council member Schatz introduced Ordinance No. 991 and made a motion to pass Ordinance No. 991 on the first reading only. Council member Kirby seconded the motion. Voting YEA: Council members Kroesing, Smith, Lukassen, Hein, Kirby, and Schatz. The motion carried and Ordinance No. 991 was passed on 1st reading only as follows:

ORDINANCE NO. 991

AN ORDINANCE RELATING TO UTILITY ASSESSMENTS FOR UTILITY INSTALLATION AND UPGRADES FOR ALL NEW SUBDIVISIONS AND HOUSING DEVELOPMENTS LOCATED WITHIN THE CITY'S CORPORATE LIMITS AND WITHIN THE CITY'S ZONING JURISDICTION; TO REPEAL ALL PARTS OF THE CODE, RESOLUTIONS AND ORDINANCES IN CONFLICT HEREWITH; TO PROVIDE AN EFFECTIVE DATE; AND TO PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA:

Section 1. DEFINITIONS: "Utility" means any municipally owned enterprise function such as electric distribution system, water distribution system, and sewer distribution system.

Section 2. That Chapter 3 of the Municipal Code of David City, Nebraska, Article 1 Water Department, §3-104A is adopted to read as follows:

§3-104A MUNICIPAL WATER DEPARTMENT; NEW SUBDIVISIONS AND HOUSING DEVELOPMENTS:

To defray the costs and expenses of utility installation/upgrades, as may be authorized by law, the Governing Body shall have the power and authority to require that all developers, petitioning the municipality for utility installation/upgrades, shall pay the following expenses:

- (a) The developer(s) is responsible for 100 percent of all costs associated with the development of new water lines installed inside the plat line and connecting subdivision(s).
- (b) The developer(s) is responsible for 100 percent of all costs associated with the installation of new water mains installed inside the plat line and connecting subdivisions.
- (c) Engineering Fees: The developer(s) is responsible for 100 percent of all costs associated with the services provided by the selected engineer.
- (d) Before final plat approval is granted by the Governing Body, the developer(s) shall have completed or paid their full share of the project costs.
- (e) The arrangement, character, extent, size, and location of all utilities within all subdivisions and housing developments shall conform to the standards of the Comprehensive Plan of current adoption and the Zoning Ordinances of the City. All required improvements and installations should be constructed or installed to conform to the provisions of this Ordinance and the standard specifications of the City.
- (f) All developers wishing to locate new subdivisions, or who have existing subdivisions and housing developments located within the City limits and within the City's zoning jurisdiction, are required to obtain and use an engineer that is approved by the municipality.

Section 3. That Chapter 3 of the Municipal Code of David City, Nebraska, Article 2 Sewer Department, §3-205A is adopted to read as follows:

§3-205A MUNICIPAL SEWER DEPARTMENT; NEW SUBDIVISIONS AND HOUSING DEVELOPMENTS:

To defray the costs and expenses of utility installation/upgrades, as may be authorized by law, the Governing Body shall have the power and authority to require that all developers, petitioning the municipality for utility installation/upgrades, shall pay the following expenses:

- (a) The developer(s) is responsible for 100 percent of all costs associated with the development of new sewer lines installed inside the plat line

- and connecting subdivision(s).
- (b) The developer(s) is responsible for 100 percent of all costs associated with the installation of new sewer mains installed inside the plat line and connecting subdivisions.
 - (c) Sewer Lift Stations: The developer(s) is responsible for 100 percent of all costs associated with the installation of any sewer lift station.
 - (d) Engineering Fees: The developer(s) is responsible for 100 percent of all costs associated with the services provided by the selected engineer.
 - (e) Before final plat approval is granted by the Governing Body, the developer(s) shall have completed or paid their full share of the project costs.
 - (f) The arrangement, character, extent, size, and location of all utilities within all subdivisions and housing developments shall conform to the standards of the Comprehensive Plan of current adoption and the Zoning Ordinances of the City. All required improvements and installations should be constructed or installed to conform to the provisions of this Ordinance and the standard specifications of the City.
 - (g) All developers wishing to locate new subdivisions, or who have existing subdivisions and housing developments located within the City limits and within the City's zoning jurisdiction, are required to obtain and use an engineer that is approved by the municipality.

Section 4. That Chapter 3 of the Municipal Code of David City, Nebraska, Article 10 Electrical System, §3-1003A is adopted to read as follows:

§3-1003A MUNICIPAL ELECTRICAL SYSTEM; NEW SUBDIVISIONS AND HOUSING DEVELOPMENTS:

To defray the costs and expenses of utility installation/upgrades, as may be authorized by law, the Governing Body shall have the power and authority to require that all developers, petitioning the municipality for utility installation/upgrades, shall pay the following expenses:

- (a) Installation of Electric Lines and Transformers: The developer(s) is responsible for 100 percent of all costs associated with the installation of all transformers and electrical lines beyond the plat line of the subdivision(s).
- (b) Engineering Fees: The developer(s) is responsible for 100 percent of all costs associated with the services provided by the selected engineer.
- (c) Before final plat approval is granted by the Governing Body, the developer(s) shall have completed or paid their full share of the project costs.
- (d) The arrangement, character, extent, size, and location of all utilities within all subdivisions and housing developments shall conform to the standards of the Comprehensive Plan of current adoption and the Zoning Ordinances of the City. All required improvements and installations should be constructed or installed to conform to the provisions of this Ordinance and the standard specifications of the City.
- (e) All developers wishing to locate new subdivisions, or who have existing

subdivisions and housing developments located within the City limits and within the City's zoning jurisdiction, are required to obtain and use an engineer that is approved by the municipality.

Section 5. Any other ordinance or section passed and approved prior to passage, approval, and publication or posting of this ordinance and in conflict with its provisions is repealed.

Section 6. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage as provided by law.

Passed and approved this _____ day of _____, _____.
(Seal)

Passed on 1st reading only 2-09-05
Mayor Stephen Smith

Passed on 1st reading only 2-09-05
City Clerk Joan E. Kovar

Council member Hein made a motion to authorize Mayor Smith to execute the following proclamation recognizing Rotary's 100th Anniversary. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

ROTARY INTERNATIONAL CENTENNIAL PROCLAMATION

WHEREAS, Rotary International, founded on February 23, 1905 in Chicago, Illinois, USA, is the world's first and one of the largest non-profit service organizations; and

WHEREAS, there are over 1.2 million Rotary club members comprised of professional and business leaders in over 31,000 clubs in more than 165 countries; and

WHEREAS, the Rotary motto "Service Above Self" inspires members to provide humanitarian service, encourage high ethical standards, and promote good will and peace in the world; and

WHEREAS, Rotary funds club projects and sponsors volunteers with community expertise to provide medical supplies, health care, clean water, food production, job training, and education to millions in need, particularly in developing countries; and

WHEREAS, Rotary in 1985 launched Polio Plus and spearheaded efforts with the World Health Organization, U.S Centers for Disease Control and Prevention, and UNICEF to immunize the children of the world against polio; and

WHEREAS, polio cases have dropped by 99 percent since 1988 and the world stands on the threshold of eradicating the disease; and

WHEREAS, Rotary is the world's largest privately-funded source of international scholarships and promotes international understanding through scholarships, exchange programs and humanitarian grants; and

WHEREAS, more than 35,000 students from 110 countries have studied abroad since 1947 as Rotary Ambassadorial Scholars; and

WHEREAS, Rotary's Group Study Exchange program has helped more than 46,000 young professionals explore their career fields in other countries; and

WHEREAS, 8,000 secondary-school students each year experience life in another country through Rotary's Youth Exchange Program; and

WHEREAS, there are over 387,000 Rotary club members in more than 7,700 clubs throughout the United States sponsoring service projects to address such critical issues as poverty,

health, hunger, illiteracy, and the environment in their local communities, and abroad.

Therefore, we, the City Council of David City, Nebraska, do hereby proclaim February 23, 2005, as Rotary International Day in David City and encourage all citizens to join us in recognizing Rotary International for 100 years of service to improving the human condition in local communities around the world.

Dated this 9th day of February, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

As there were items waiting consideration, Council member Kroesing made a motion to recess until Monday, February 28th at 6:00 p.m.. Council member Kirby seconded the motion. Voting YEA: Council members Schatz, Smith, Lukassen, Hein, Kirby, and Kroesing. Voting NAY: None. The motion carried. The recessed meeting will be concerning the B.C. Skate Park Association's request for a location and the painting alternatives for the new water tower. The Committee of the Whole meeting will immediately follow the recessed council meeting. Mayor Smith declared the meeting recessed at 10:45 p.m..

February 28, 2005

Mayor Smith called the meeting of the City Council of David City, Nebraska to order at 6:00 p.m. on February 28, 2005 in the City Office Building to continue the meeting of February 9, 2005 which had been in recess.

Present for the meeting were: Mayor Stephen Smith, Council members Ted Lukassen, Mark Kirby, Gary Smith, Nick Hein, and Bill Schatz, City Administrator Jeff Fiegenschuh, Police Chief Stephen Sunday, Water/Sewer Supervisor Jim Kruse, Electric Supervisor Tim Kovar, Park/Auditorium Supervisor Bill Buntgen, Planning Commission member James Vandenberg, Joe Roberts, Pam Siroky of Agency One Insurance, Ed Sieck, Rick Comte, B.C. Skate Park Association members Dave, Michelle, Alex, & Erik Streeter, Randy, Wendy, and Dylan Isham, Mrs. Alice Isham, Jeanne & Joe Ingwersen, Mark, Kristi, and Alex Palik, Travis Simmons, Jon Reisdorff, Kip Howard, Boston Treat, Nicole Sabata, and Ariana & Veronica Garcia, Banner Press Editor Larry Peirce, and City Clerk-Treasurer Joan E. Kovar. Council member Gary Kroesing was absent due to heart bypass surgery.

Council member Hein made a motion to come back into session. Council member Lukassen seconded the motion. Voting YEA Council members Kirby, Schatz, Smith, Hein, and Lukassen. Voting NAY: None. Council member Kroesing was absent. The motion carried.

The B.C. Skate Park Association showed a video of skate boarders using a skate park located in Omaha. The members stated that it was not as noisy as one might expect, the skate park was not fenced or lighted, and the skate park was closed from 11:00 p.m. to 5:00 a.m. Wendy Isham stated that the Skate Park Association wants to work with the City and their main objective is to keep the kids safe. Isham stated that this is not a "fad"; it will increase tourism; be used for events; improve city and youth relationships; and if the kids are skating they are not just sitting around and/or drinking. Isham stated that she realizes there have been some issues with profanity, but she said to imagine if you had a hobby that you really enjoyed and for the past

three years everyone is telling you to go away, you would be frustrated too. Isham cited a phrase from the internet "If your city doesn't have a skate park, your City is a skate park." She stated that is exactly what is happening. The kids don't have a skate park so they are trying various locations around town. Isham reported that statistically this is a safe sport - safer than football, softball, or basketball.

The Council stated that the public is worried about loud boom boxes, swearing, and litter. The Council is worried about liability issues. Wendy Isham stated that most kids don't play boom boxes and didn't feel that swearing would be a problem. Kristi Palik stated that the area could be policed - "I would go to the skate park once or twice a day if necessary to police the area and pick up trash, etc.". Isham distributed an Attorney General's opinion by Attorney General Don Stenberg concerning liability issues: (see attached for full opinion) which concluded "...for all of the reasons discussed above, it is the opinion of this office that, provided there is no charge, skateboarding at a skateboard facility owned by a city and situated on city-owned property would be a "recreational purpose" under §37-729(3) and would be subject to the liability-limiting provisions of the Nebraska Recreation Liability Act.

Pam Siroky of Agency One Insurance stated that most municipality carriers either charge an additional premium for the exposure of a skate park or they specifically exclude them and the city elects to self insure. EMC's policy form has a specific exclusion in the liability section for skate parks. The only way for the City to obtain coverage is by purchasing the endorsement. EMC has a specific exclusion to keep the General Liability rate competitively priced and they do not charge for extra exposures that a municipality may not even have. If the skate park just installs a flat 50x80 slab of concrete, that does not constitute a skate park and no endorsement would have to be made to the city's policy as coverage would automatically be provided. This would not even have to be fenced at this point. Once the obstacles are installed, the insurance company would require a fence and proper signs and the policy can be endorsed to add liability coverage for the exposure. The charges are as follows: The charge assessed is based on the size of the obstacles and the number of obstacles that are placed on the premises. The charge is \$200 per obstacle that is 3' or lower. Any obstacle that is over 3', the company assesses a \$500 charge per obstacle. Based on the drawing submitted by the B.C. Skate Park Association, if all obstacles are 3' or less the city could expect an additional premium to the General Liability section of \$1,500 per year. If the fencing is not put in place this premium will double or the company may elect not to provide coverage at all.

Council member Smith stated that a lot of people expressed concerns or sent letters with concerns about the proposed location in the City Park. Council member Kirby stated that people even expressed concerns that this area of the park is used for snow sledding. Council member Hein stated that he didn't feel that the skate park belonged in the City park and felt that the Youth Center Parking lot (between the railroad track and "G" Street between 5th & 6th Streets) would be a better location. Kristi Palik stated that they are trying to get the kids out of the downtown area. Business owners don't like the kids on the sidewalks in front of their businesses; the kids will use the bathrooms in the bars, and go to the bars when they need something to eat or drink, and that is not a good environment.

Council member Lukassen reported that he was looking for viable options. He suggested the area in the City Park by the football field that used to be utilized as a batting cage. He stated it is along the road that goes down to the fishing dock. He stated that there is ample room and they would be further removed from the residential areas where residents are concerned with noise factors. Discussion followed.

As the B.C. Skate Park Association needs a definite location so they can apply for grants as part of their fund raising effort, Council member Smith made a motion to allow the B.C. Skate Park Association to use the property located west of the football field as a possible sight. Council member Schatz seconded the motion. Park/Auditorium Supervisor Bill Buntgen stated that he had concerns regarding drainage and manholes in this area and requested that the City Council take a closer look at this location before voting on this. Mayor Smith instructed Clerk Kovar to take roll call. Voting YEA: Council members Hein, Lukassen, Kirby, Smith, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried.

The water tower painting alternatives were discussed. The following contributions have been received for painting the American flag on the water tower: Nick Hein \$100; Isabel Tomek \$100; Roger Helgoth \$100; and the following pledges were made: Gary Kroesing \$300, and Ted Lukassen \$100 for a total of \$700 thus far. City Administrator Fiegenschuh needs a decision by tomorrow. The alternatives that include the American flag range in price from \$6,720 to \$8,820. Therefore Council member Kirby made a motion to accept water tower painting Alternative 2: Fountainbleu (25BL) exterior tank color; Black block lettering, 2 sides, "David City"; Cost: \$0; Additional days: 0. Council member Smith seconded the motion. Discussion followed. City Administrator Fiegenschuh will check into prices for adding the flag at a later date; embossing the flag inside the "D", and various options. Voting YEA: Council members Schatz, Kirby, Smith and reluctantly Hein and Lukassen. Voting NAY: None. Council member Kroesing was absent. The motion carried.

There being no further business to come before the Council, Council member Schatz made a motion to adjourn. Council member Lukassen seconded the motion. Voting YEA: Council members Kirby, Smith, Hein, Schatz, and Lukassen. Voting NAY: None. Council member Kroesing was absent. The motion carried and Mayor Smith declared the meeting adjourned at 7:11 p.m..

Mayor Stephen Smith

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES
February 9, 2005 / February 28, 2005

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of February 9, 2005 and February 28, 2005; that all

of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Joan E. Kovar