

## CITY COUNCIL PROCEEDINGS

March 9, 2011

The City Council of the City of David City, Nebraska, met in open public session in the meeting room of the City Office, 557 N 4<sup>th</sup> Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on March 3<sup>rd</sup>, 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 Alan Zavodny, Council members Gary Kroesing, Bill Scribner, Mike Rogers, Ruddy Svoboda, and Gary Smith, City Attorney Jim Egr, Interim City Administrator Joan Kovar and Interim Clerk-Treasurer Tami Comte. Council member John Vandenberg was absent.

Also present were: Police Chief Anthony McPhillips, Lieutenant Mike Hutchinson, Wastewater Supervisor Alan Boyd, Water Supervisor Gary Janicek, J. Robert Palik, Margaret Kitt, Jan Davis and Chip Wical of Black Hills Energy, Phil Lorenzen of D.A. Davidson, Jim Condon of Olsson Associates, Darrell Kahler of Henningsen Foods, Butler County Economic Development Director Keith Marvin, Lowell Schroeder with the Northeast Nebraska Economic Development District, Carol Brehm, Mike Draper, Janis Cameron, Carolyn Yates, Joy Fountain, Bob Hilger, Dana and Jane Trowbridge, Jim Thege, Don McLaughlin and Bill McLaughlin, and Banner Press Reporter Abigail Vetick.

The meeting opened with the Pledge of Allegiance.

Mayor Zavodny informed the public of the "Open Meetings Act" posted on the east wall of the meeting room.

The minutes of the February 9, 2011 meeting of the Mayor and City Council were approved upon a motion by Council member Kroesing and seconded by Council member Rogers. Voting AYE: Council members Scribner, Svoboda, Smith, Rogers, and Kroesing. Voting NAY: None. Council Member Vandenberg was absent. The motion carried.

Mayor Zavodny asked for consideration of claims. Council member Smith made a motion to authorize the payment of claims and Council member Scribner seconded the motion. Voting AYE: Council members Svoboda, Rogers, Scribner, Smith, and Kroesing. Voting NAY: None. Council Member Vandenberg was absent. The motion carried.

Mayor Zavodny called for Committee and Officer Reports.

Council member Kroesing stated that the Police issue with snow removal and towing cars needs to be addressed. (The cars are not towed to a secured location and therefore, the towing charges are not being paid by the car owners.) Kroesing also stated that he wanted Alan Boyd to know that he read the last line on his report. (It stated "Just to set the record straight, **I did discuss the issue of a larger tractor that could be used to mow at the airport with the**

**street superintendent prior to the February council meeting.** This department head will no longer pursue this option again.”)

Council member Kroesing made a motion to approve the Committee and Officer Reports as presented. Council member Scribner seconded the motion. Voting AYE: Council members Scribner, Svoboda, Smith, Kroesing, and Rogers. Council Member Vandenberg was absent. Voting NAY: None. The motion carried.

Jim Condon of Olsson Associates was present regarding the proposed wastewater treatment plant improvements. He stated that he has been working with Wastewater Supervisor Scott Boyd for several years on some issues that they have with Henningsen Foods load. During the week the load from Henningsen's is really high and then on the weekends there isn't really much of anything that comes in. So, the treatment plant has a lot of ups and downs. Henningsen's had a lot of really good organic loading and what we've looked at is putting in an equalization system that kind of smooths everything out plus what we would do is also provide some treatment so that the load actually going into the wastewater plant is less, thereby, providing some real energy savings all the way around the board and would help reduce Henningsen's costs and the City's costs. So, that's really what this facts sheet is describing that program. We're talking about adding a two cell anaerobic lagoon that would be covered and what we would do is reduce the loading going to the treatment plant and equalize the flow. Also, it would capture methane gas that could be flared off and reused which would be a definite benefit and another part of that, as is shown on the back of the sheet, is where these things are going to occur and what we are looking at. On the back it also shows the estimated costs for the different parts of the project. We're looking at not only a lagoon portion of this project, but one of the things that has happened in the past is all of the flow that comes in from town goes to a pump station out there at the lagoon system. That pump station is pretty low and in the past it has flooded. We've gotten the ok from FEMA so that we can get some grant money to replace or relocate that lift station so that it doesn't flood again and then we can make these other improvements. About three years ago we did a rate study for the water and the wastewater system. Part of that rate study was to allow for the funds necessary to pay for the financing of this project. Henningsen's is committed to paying for 65% of cost of this project also. In the case of the lift station, FEMA is going to pay for 75% of the cost of that. We've got some State revolving loan financing for the portion that Henningsen Foods would not be paying for. We've got all of the pieces in place. Right now SRF (State Revolving Fund) is waiting for us to make an application to them for the financing on this project. So, really what we're looking for tonight is an okay to get started on the design work for the anaerobic lagoon portion of this project. The way we've laid out the contract is in phases, starting out with the one that we need to do initially and then when we would get the FEMA money then you could authorize proceeding with work on that. Basically, you are in control every step of the way is the way we've laid out the contract. We'll be back to you each time for authorization to proceed on to the next step.

Darrell Kahler of Henningsen Foods stated that Henningsen's has had an agreement in place since 1997 and it's a twenty year agreement to build and pay for a debt reduction on the existing wastewater treatment plant. That agreement is due to sunset in 2017. This is pretty much an upgrade to keep an existing asset viable. I would consider this to be maintenance to the system. What Henningsen's has done over the years is contribute loading to the City's system and over the years our loading has become a little different just due to our business practice. We used to break eggs five days a week and now we are breaking eggs four days a week and this is the reason that we see the loadings fluctuate. They are high beginning on Tuesday morning and kind of peak during the middle of the week and slowly dropping off and becoming low on Saturday when we've been out of production for about a day and a half.

We've been working with Olsson Associates on the design and we agree that this is the best thing for the City and for the company to proceed and maintain what we've come together to build back in 1997.

Mayor Zavodny asked Kahler to talk a little about the future of Henningsen Foods.

Kahler stated that Henningsen Foods has plans to break eggs in David City for many years to come. As you may or may not be aware, there's a lot of things going on in the animal agriculture these days that can affect the way our company does business. I don't know if you are familiar with some of the ballot initiatives that have gone around the country but that's one thing that we are really concerned about and anybody in our industry is concerned about. We have secured egg supplies, not just from local farmers, but from out of state farmers, so that we can continue to supply our plant here in David City with raw materials in order to operate.

Mayor Zavodny stated that he certainly hoped that Nebraska, of all states, would be understanding of agricultural practices.

Jim Condon stated that there was some information that he put together on that information sheet that lines out exactly what's happening. He stated that he would be happy to answer any questions.

Interim Administrator Joan Kovar asked wastewater supervisor Scott Boyd if he saw any problems with moving the lift station to the other side of the road.

Wastewater Supervisor Boyd stated that where we're looking to move it to is where the City originally had a wastewater plant and we did some research into that last year and found that we still own that ground. It works out just perfect because the 12" trunk line that comes from the south side of town comes right to that point and the 18" that serves pretty much the north end of town comes down M Road and they intersect right there. So, it's a good place and elevation wise it's just outside the 100 year flood plain.

Interim Administrator Kovar asked if he saw having the road in between as a problem.

Wastewater Supervisor Boyd stated that they would have to contact the County and they already have a sleeved force main going under there to the golf course. Both of those trunk lines cross the road in that area so he didn't think that would be a problem with the County of crossing it. He said he's sure they'll have to put it through a sleeve which is only smart because if you've got a pressurized line it's going to wash the road out right away so it just makes sense. Plus, it would take any kind of shock load or loadings from vehicles going over it.

Jim Condon stated that they haven't done the design work yet for this and that's what we are asking for tonight. We need the okay to go ahead and get the design so we can go to the State and get the application in for this revolving loan fund money and proceed on that.

Mayor Zavodny asked what the commitment was for that part of the project.

Jim Condon stated that Henningsen's pays around \$91,000 of that and the City's portion would be \$49,000 of that. Again, the rates that we established and are in place now generate the funds to cover the financing for that. So there is no impact as far as rates or user fees as far as this work goes.

Mayor Zavodny asked what that does for the City's capacity as far as other growth.

Jim Condon stated that it significantly increases the capacity of the whole system to handle additional load by taking Henningsen Foods and reducing a significant portion of the BOD load, which is basically the strength of the wastewater, we are reducing that about 60% so we are really gaining about that equivalent amount in capacity at the treatment plant. So, we're really gaining a significant amount of capacity. What it really does for Henningsen's and the City is that it reduces the energy cost of having to treat all of that waste water so we are really saving 60% of the energy cost.

Darrell Kahler stated that Henningsen's pays its proportionate share of the cost to treat the waste. Each year those numbers are revisited and they are based upon history of what the previous year's loadings were like and what the future bill will be like is based on that. It's a lot more complicated than that but that's it in a nut shell.

Jim Condon also stated that the State is ready to get an application for this project. In order to get all of that together, they need to get started with final drawings.

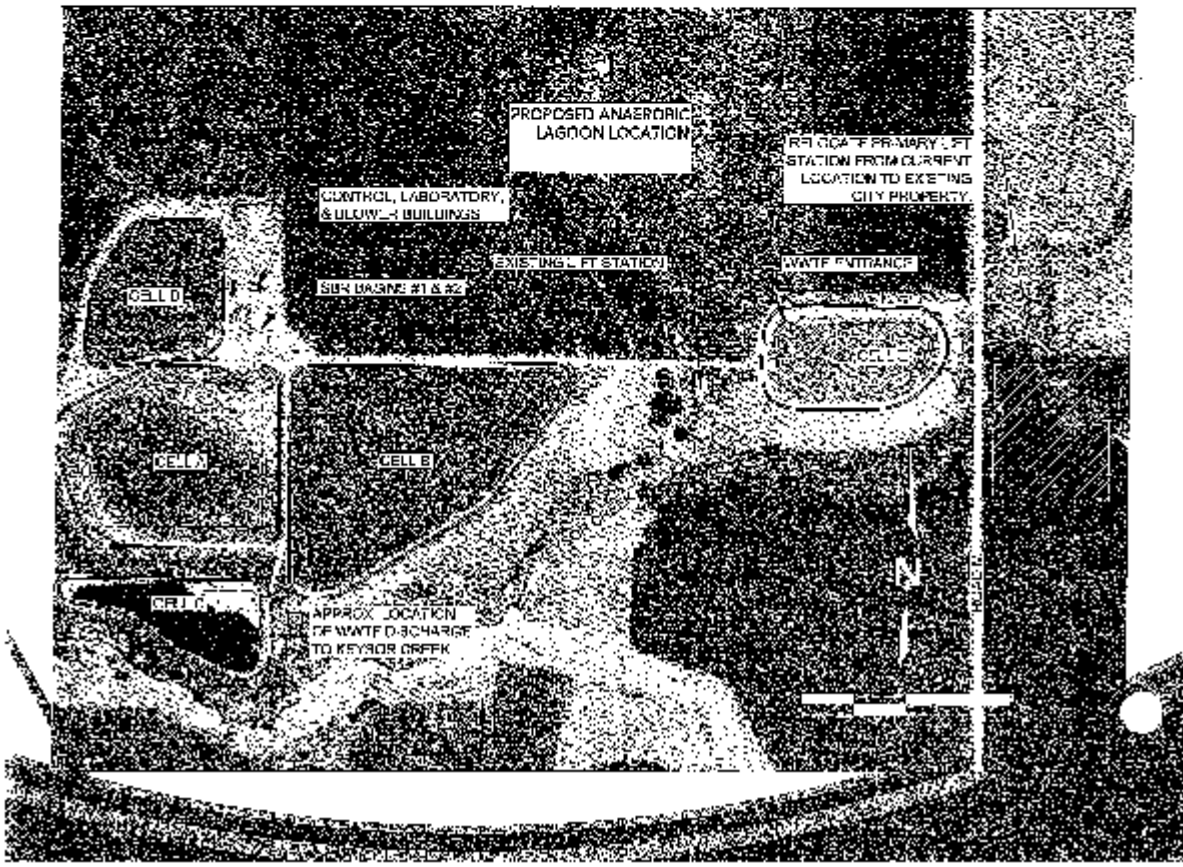
Council member Scribner made a motion to approve phase 1 of the proposed wastewater treatment plant improvements. Council member Rogers seconded the motion. Voting AYE: Council members Scribner, Svoboda, Smith, Kroesing, and Rogers. Council Member Vandenberg was absent. Voting NAY: None. The motion carried.

Council member Kroesing made a motion to award the contract for wastewater plant improvements to Olsson Associates. Council member Scribner seconded the motion. Voting AYE: Council members Scribner, Svoboda, Smith, Kroesing, and Rogers. Council Member Vandenberg was absent. Voting NAY: None. The motion carried.

Improvement	Estimated Cost
Anaerobic Equalization Lagoon, Cover, Gas Management System, Lift Station, etc.	\$1,351,225
Relocate Primary Pump Station	\$1,197,720
SCADA Improvements	\$184,000
SBR Basins VFDs	\$77,133
<b>Total Estimated Cost</b>	<b>\$2,732,378</b>

Entity	Estimated Cost
<b>Total Estimated Project Cost</b>	<b>\$2,732,378</b>
Measuring and Evaluate Project Cost Portion	\$1,243,228
David City Project Cost Portion	\$1,489,150
RFI/Grant for Lift Station Relocation (70% of lift station cost only)	\$814,750
Remainder by City (other energy grants may be available)	\$674,360
Average Annual Cost per service connection (1.202 connections/20 year interest rate)	\$4.47

### Overall Site Map



Council member Scribner made a motion to advance to agenda item #19. Council member Svoboda seconded the motion. Voting AYE: Council members Scribner, Svoboda, Smith, Rogers, and Kroesing. Voting NAY: None. Council Member Vandenberg was absent. The motion carried.

Interim City Administrator Kovar opened the sealed bids for the 1977 Dodge Pickup and they were as follows:

Gary L. Kroesing of David City, NE bid \$755.00  
Albert Tews of David City, NE bid \$1,000.00  
Jesse Callaway of Rising City, NE bid \$790.00  
Don Haldeman of Rising City, NE bid \$900.00  
Steve Looper of David City, NE bid \$1,501.00

Council member Smith made a motion to accept the bid of \$1,501.00 which was submitted by Steve Looper of David City for the sale of the 1977 Dodge Pickup. Council member Scribner seconded the motion. Voting AYE: Council members Scribner, Svoboda, Smith, Rogers, and Kroesing. Voting NAY: None. Council Member Vandenberg was absent. The motion carried.

Mayor Alan Zavodny declared the public hearing open at 7:30 p.m. to consider the Resolution of Necessity creating Storm Water Sewer District No. 2010-1 (NW Drainage Project).

Margarett Kitt passed pictures around for the Mayor and Council to look at regarding the flooding last year (2010). The pictures showed water from Siffring's field that ran past Family Dollar. She stated that she was at Stop-Inn and they had three to four inches of water and corn stalks going through their drive way. The water then runs down the "fairgrounds road" and then tries to go out through Grubaugh's draw. She also stated that she has lived there for 30 years and the water used to run down the ditch and down through the culvert and when Sid Magdanz was the administrator he decided that the water should run through the field. She said that her water line runs through that field and she has had to rebury that line three times because the dirt around it keeps washing away. The ditch used to be very shallow and now it's deep. She felt that five acre tract that has the water running through it is now worthless. There are two culverts, one is four foot and one is two foot that already carry the maximum amount of water with one good rain. She said that she didn't know how they were going to get more culverts underneath the railroad trestles.

Mayor Zavodny asked Mrs. Kitt if she had attended the Northwest Drainage meeting at the library.

Margaret Kitt stated that nobody had let them know about the meeting or she would have attended. She has a concern about the water by the soccer field where it was swirling. She stated that if a child fell in that they would probably drown and it is a definite safety concern.

Mayor Zavodny asked for other comments on the Northwest Drainage. He stated that they had been focusing on the southwest part of it.

Jim Thege asked how soon they were going to replace the culvert under the road. They have been talking about making the drainage ditch wider but they never talk about the culvert. The culvert along M Road & 35 Road is pretty much oblong. They said that they were going to change it and they never did. They need to change it to make that water flow better.

Mayor Zavodny responded by saying that they actually had a meeting scheduled for this week but due to the weather the meeting was cancelled. He stated that he had asked some of the questions the water going over M Road. That has been a concern raised by another one of the landowners in that area. There's a lot of water now and if you speed it up, potentially, you're going to get it going there and there are some legitimate design questions that have been asked.

Don McLaughlin, representing the McLaughlin family, asked if the power poles that are going to need to be moved closer to the property to widen the ditch, could be moved to the west side of the road.

Mayor Zavodny stated that they asked that question. He said he believed that there were nine of them and he said that he asked Jay Bitner that question. He said that Jay didn't say that it couldn't happen that way but they had just planned on moving them.

Don McLaughlin stated that south of the "fairgrounds road" that the poles are on the west side of the road. He stated that it seemed to him that if you are going to put a ditch in there and going to run a lot of water that you would have to reset the poles anyway that they would be more stable on the other side of the road.

Mayor Zavodny stated that question had been asked before.

Bob Hilger stated that he'd been working with Jay Bitner on this project for many years. He stated that both the City and the County have copies of the current plan. He encouraged everyone to take some time and really study the plans because all of the elevations and the capacity of the culverts have changed. He said that a lot of the questions that he hears people asking are there in the design. He stated that this is the best plan that he has seen in twenty plus years. Butler Public Power has been contacted about moving the power poles and they said that they'd think about it and look into it. He said that he's pleased with Phase 1 and Phase 2 of the plan. A big concern of his was that they would drain the water out of the City without taking care of the problem at "fairgrounds" corner, however, Phase 1 takes care of the problem so the water can get away when it comes out of the City faster than it does now. He said he doesn't know what level they are at right now but the landowners have not been contacted and we have a lot of work to do with easements and acquisitions to put this into place. He said, in his opinion that comes first.

Mayor Zavodny shared his concerns and stated that was part of his frustration. He said that we need to take care of those things first. The other thing that has changed since the start of this is that Timpfe is looking at doing some fairly significant expanding and there would be a parking lot, more roof area, and if the street is paved he doesn't want to see water rushing at 90 mph through Mark Kirby's second story window. He wants some assurances on that. It is a fairly significant change. It's not insurmountable but it needs to be considered. He wasn't sure why there had been such a delay in working with the landowners on acquisitions. He would expect to have that question answered in the near future.

Don McLaughlin asked about the addition at Timpfe with the added paving that they will be doing if any consideration had been given to having an additional ditch or something put between their farm and Timpfe so it takes it to the system that they are putting in.

Mayor Zavodny said that was an important question. He felt that they would have to try to take water in different directions and not funnel it all in one direction. They assured him that they would look at doing some of that. There wasn't a lot of consideration along "O" Street to do much so depending on where the break will be to head south that will need to be considered. They discussed some of these issues at a preliminary meeting.

Don McLaughlin stated that there used to be two easements across their property for drainage and that the NRD told them that one was released and that the other should be released because of inactivity and no upkeep on it.

Interim City Administrator Kovar asked Mr. McLaughlin if Jim McDonald had been out there this week to do any cleaning on the ditch. She stated that Jim McDonald didn't realize that the City had that easement. She said that she gave him a copy of the easement and McDonald told her that now he would go out there and clean out that ditch.

Council member Kroesing stated that there is a big ditch that comes from two different directions and doesn't meet in the middle.

Mayor Zavodny stated that they assured him that was taken care of and that was certainly one of Timpote's big considerations.

Bill McLaughlin stated that he went to the original meeting and that since that time there have been some things added with Timpote and so forth and he would like to know where we are in this process. After this meeting will there be a new plan and where do we go from here.

Mayor Zavodny stated that the City is not ready to do much more until the landowners have been worked with on acquisition. At one point we talked about getting the bids going in March but there is no way that we are ready for that. We need to get some of these other things taken care of first. We did have a meeting scheduled for earlier in the week and it was cancelled because of bad weather. We are going to want to make sure that we have adequate answers to these questions.

Bill McLaughlin stated that he understood that there was a certain amount of days that they had to wait until they could contact any of the landowners concerning easements and has that time passed or does it restart if there are changes.

Mayor Zavodny stated that he didn't know the answer to that question.

Council member Kroesing asked about the storm drains on Industrial Drive. He stated that he thought that would be a big factor and there's no confirmation yet on what Timpote is planning to do.

Mayor Zavodny stated that he made an effort to find out what they were planning and it didn't pan out. They were in transit and he was unable to contact anyone. He said that he doesn't know exactly but he feels that we need to plan for them. The big fear is that we don't want to make it worse. He thinks that we can work through this but we need to make sure that we understand what we are doing and why.

Council member Kroesing stated that even if we handle the water coming from the north, the ground water problem in that area can blow the manholes off at the fairgrounds. There can



be a problem with just the ground water. There are still going to be ground water issues. This is not going to take care of 100% of the water problems.

Former mayor Dana Trowbridge asked what is the threshold that they are shooting for - as far as the 50 year rain or the 20 year rain. He stated that no matter what they do they are going to get a threshold past that design standard and then everybody is going to say they told you so. He stated that maybe that needs to become public at some point in time.

Mayor Zavodny stated that he thought that Jay Bitner talked about that at some point in time but he didn't remember what he said it was.

Council member Kroesing stated that he has seen flooding with a 15" rain and also with a 4" rain. He said, "We aren't going to hold that back. We ought to be able to control some of it though."

Former mayor Dana Trowbridge stated that this was not going to be a complete solution. It will moderate the effects.

Planning Commission member Keith Marvin stated that the planning commission is looking at the water issues for future expansions and the need to keep the water on site as far as drainage in concerned.

Mayor Zavodny stated that this thing started over 30 years ago and we still haven't addressed anything. He stated that we have created some of our own problems. Silver Heights was never designed with anywhere for water to go so streets act as a water way. But, we can't change that at this point.

Mayor Zavodny declared the public hearing closed at 7:53 p.m.

Council member Kroesing introduced Resolution No. 10 - 2011 and moved for its passage and adoption. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Rogers, Scribner, Smith, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried and Resolution No. 10 - 2011 was passed and approved as follows:

#### RESOLUTION NO. 10-2011

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

Section 1. That at a meeting of the Mayor and Council held February 9, 2011 there was a proposed Resolution of Necessity for the construction of storm sewer improvements within proposed Storm Water Sewer District No. 2010-1 (NW Drainage Project) of the City of David City.

Section 2. Notice of the said proposed Resolution of Necessity was published in the Banner Press newspaper on February 24, 2011 and March 3, 2011, as provided by law.

Section 3. That a hearing was held in accordance with published notice on this 9<sup>th</sup> day of March, 2011 as provided by law and said published notice.

Section 4. That all things having been done relative to the creation of said Storm Water Sewer District No. 2010-1 (NW Drainage Project) of the City of David City, and the City Council now having authority to pass and adopt said Resolution of Necessity as proposed, now therefore, be it resolved that the improvements to the City's storm sewer system as described in the Resolution of Necessity creating Storm Water Sewer District No. 2010-1 (NW Drainage Project) of the City of David City are ordered constructed in accordance with Resolution of Necessity No. 5-2011 and said Resolution No. 10-2011 be and hereby is ordered to be passed and adopted, and the City shall proceed with the completion of the construction of the said improvements in accordance with the plans and specifications as prepared by the City's Engineers for such improvements and all prior actions of the Mayor and City Council and of the City of David City relative to said storm sewer improvements taken previous hereto, be and hereby are in all respects, ratified approved and confirmed.

PASSED AND APPROVED this 9<sup>th</sup> day of March, 2011.

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Mayor

ATTEST:

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Interim City Clerk

Council member Kroesing introduced Resolution No. 5-2011 at the February 9, 2011 City Council meeting and Council member Rogers seconded the motion.

Voting AYE: Council members Svoboda, Rogers, Scribner, Smith, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried and Resolution No. 5 - 2011 was passed and approved as follows:

**RESOLUTION NO. 5 - 2011**

RESOLUTION OF NECESSITY

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, AS FOLLOWS:

1. The Mayor and Council hereby find and determine that it is necessary and advisable to construct additions and improvements to the City's Storm Water Sewer System consisting of the following:

The proposed improvements include re-grading, shaping, and realignment of existing waterways and road ditches, replacement of culverts at driveways and street intersections, construction of new diversions and vegetated earth waterways, and construction of new storm sewer conduits

with appurtenant inlet structures. The downstream point of beginning for the proposed work is at the inlet to a 48" culvert that passes beneath the Union Pacific Railroad and is located along the Union Pacific Railroad north right-of-way and approximately 275' east of the centerline of Butler County Road 'M'. From this point of beginning, reshape and re-grade approximately 6,400 linear feet of existing waterway and road ditch along County Road 'M' east right-of-way, including installation of six (6) 6' x 4' box culverts and one (1) 5' x 4' box culvert. At the intersection of County Road 'M' and Burlington Northern and Santa Fe Railroad, proceed eastward with construction of approximately 1,500 linear feet of new vegetated earth waterway, two (2) 58 ½" x 36" culverts under the BNSF Railroad, tributary drainage channels, and 600 linear feet of 66" storm sewer. At the northeast corner of Timpote Industries, Inc. property, proceed southward to East 'S' Street with construction of approximately 740 linear feet of 60" storm sewer. Continue eastward along the East 'S' Street right-of-way with construction of approximately 525 linear feet of 54" storm sewer, including boring and jacking beneath Nebraska State Highway 15, to a point approximately 100 feet east of the State Highway right-of-way. Continue construction southward from that point, and parallel to the State Highway 15 east right-of-way, with approximately 560 feet of 54" storm sewer. At that point continue eastward approximately 225 linear feet with construction of 42" storm sewer, and then southward with approximately 680 linear feet of 42" storm sewer. From this location continue southward to the 'O' Street north right-of-way, and end of storm water system improvements, with construction of approximately 670 linear feet of vegetated waterway. These improvements will also include construction of appurtenant structures, rock rip-rap, and several small tributary drainage channels that convey local drainage into the primary storm water conveyance facilities.

2. The outer boundaries of the said Storm Water Sewer District, referred to as Storm Water Sewer District No. 2010-1 (NW Drainage Project) shall include property located within the City of David City, Nebraska, more fully described as follows:

The outer boundaries of Storm Water Sewer District No. 2010-1 (NW Drainage Project) shall be the Corporate Limits of the City of David City, Butler County, Nebraska and the property contained therein consists of all of the lots, tracts and parcels of real property contained within the said Corporate Limits of the City of David City, Nebraska.

3. The size, kind and location and terminal points of storm water sewer pipe, surface drainage structures and storm water surface drainage ways and other related improvements proposed to be constructed as a part of said additions and improvements are described as follows:

The proposed improvements include re-grading, shaping, and realignment of existing waterways and road ditches, replacement of culverts at driveways and street intersections, construction of new diversions and vegetated earth waterways, and construction of new storm sewer conduits with appurtenant inlet structures. The downstream point of beginning for the proposed work is at the inlet to a 48" culvert that passes beneath the Union Pacific Railroad and is located along the Union Pacific Railroad north right-of-way and approximately 275' east of the centerline of Butler County Road 'M'. From this point of beginning, reshape and re-grade approximately 6,400 linear feet of existing waterway and road ditch along County Road 'M' east right-of-way, including installation of six (6) 6' x 4' box culverts and one (1) 5' x 4' box culvert. At the intersection of County Road 'M' and Burlington Northern and Santa Fe Railroad, proceed eastward with construction of approximately 1,500 linear feet of new vegetated earth waterway, two (2) 58 ½" x 36" culverts under the BNSF Railroad, tributary drainage channels, and 600 linear feet of 66" storm sewer. At the northeast corner of Timpote Industries, Inc. property, proceed southward to East 'S' Street with construction of approximately 740 linear feet of 60"

storm sewer. Continue eastward along the East 'S' Street right-of-way with construction of approximately 525 linear feet of 54" storm sewer, including boring and jacking beneath Nebraska State Highway 15, to a point approximately 100 feet east of the State Highway right-of-way. Continue construction southward from that point, and parallel to the State Highway 15 east right-of-way, with approximately 560 feet of 54" storm sewer. At that point continue eastward approximately 225 linear feet with construction of 42" storm sewer, and then southward with approximately 680 linear feet of 42" storm sewer. From this location continue southward to the 'O' Street north right-of-way, and end of storm water system improvements, with construction of approximately 670 linear feet of vegetated waterway. These improvements will also include construction of appurtenant structures, rock rip-rap, and several small tributary drainage channels that convey local drainage into the primary storm water conveyance facilities.

The type of sewers and related improvements consist of storm water sewer improvements. Box culverts referred to in the plans and specifications shall be constructed of reinforced concrete formed and cast in place or pre-formed construction or other suitable materials and installed in the locations as set out in the plans and specifications. Storm sewer pipe, storm sewer mains and storm sewer lines shall be of the size, locations and terminal points or length of such storm sewers all as set out in the plans and specifications and shall be of cast concrete construction with such appurtenances as are required and such joints and gasket materials as are set out in the plans and specifications. Inlets and certain other storm sewers and pipes may be constructed of corrugated metal or other suitable materials all as set out in the Engineers plans and specifications. Vitrified clay pipe is hereby determined not to be a suitable material for those parts of the storm water sewer improvements which consist of pipe construction.

4. Reference is hereby made to the plans and specifications for said additions and improvements which have been prepared by Robert J. Bitner, P.E., District Engineer for the Upper Big Blue Natural Resources District, acting as Project Engineer for the City, and which, together with said Engineer's estimate of total cost for said additions and improvements have been filed with the City Clerk prior to the proposing of this Resolution.

5. The Engineer's estimate of total cost for the proposed Storm Water Sewer System improvements for said Storm Water Sewer District No. 2010-1 (NW Drainage) is as follows:

TOTAL ESTIMATED PROJECT COST	<u>\$2,100,000</u>
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6. Said improvements shall be made at public cost. It is hereby found and determined that the improvements are general public improvements of benefit to all residents of the City and no special assessments shall be levied to reimburse the City for the cost of said improvements. Said storm water sewer additions and improvements shall be financed by the issuance of the City's General Obligation Sewer Bonds issued pursuant to Section 17-925, R.R.S. Neb. 2007, provided however the City may apply other available funds for project costs and payment of bonds issued relative to the project, including sales tax revenues collected from the levy of a one and one-half percent sales and use tax for a ten-year period ending October 1, 2010, which sales and use tax was approved by voters at a special election held in conjunction with the statewide primary election on May 11, 2010.

PASSED AND APPROVED this 9<sup>th</sup> day of March, 2011.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Interim City Clerk

Council member Kroesing introduced Ordinance No. 1137. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Svoboda, Rogers, Smith, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1137 on the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Scribner, Rogers, Smith, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried and Ordinance No. 1137 was passed and adopted as follows:

ORDINANCE NO. 1137

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, CREATING A STREET IMPROVEMENT DISTRICT WITHIN THE CITY OF DAVID CITY TO BE KNOWN AS STREET IMPROVEMENT DISTRICT NO. 2011-1; DEFINING THE BOUNDARIES OF SAID DISTRICT AND THE PROPERTY CONTAINED THEREIN; AND, PROVIDING FOR THE CONSTRUCTION OF IMPROVEMENTS THEREIN CONSISTING OF REMOVAL OF EXISTING STREETS AND RELATED APPURTENANCES AS MAY BE REQUIRED; GRADING; CONSTRUCTION OF CURB AND GUTTER AND CONCRETE PAVING; REPAIR OR REPLACEMENT OF BRICK STREET SURFACES; CONSTRUCTION OF PARKING AREAS, SIDEWALKS AND PEDESTRIAN WALKS AND PLAZAS; LANDSCAPING; STREET AND PEDESTRIAN AREA LIGHTING, SIGNAGE AND TRAFFIC CONTROLS; AND, CONSTRUCTION OF STORM DRAINAGE; TOGETHER WITH OTHER NECESSARY APPURTENANT IMPROVEMENTS AS MAY BE INCIDENTAL THERETO.

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

Section 1. The Mayor and City Council of the City of David City, Butler County, Nebraska, hereby find and determine that it is in the best interests of the City that

4<sup>th</sup> Street from the south line of C Street north to the north right-of-way line of the Nebraska Central Railroad Company trackage;

5<sup>th</sup> Street from the south line of C Street north to the north right-of-way line of the Nebraska Central Railroad Company trackage;

6<sup>th</sup> Street from the south line extended of Lot 14, Block 31, Original Town of David City, north to the north right-of-way line of the Nebraska Central Railroad Company trackage;

C Street from the east line extended of the north/south alley in Block 31, Original Town of David City, west to the west line extended of the north/south alley in Block 33, Original Town of David City;

D Street from the east line of 6<sup>th</sup> Street west to the west line extended of the north/south alley in Block 33, Original Town of David City; and

E Street from the east line of 6<sup>th</sup> Street west to the west line of 3<sup>rd</sup> Street;

including all areas formed by the crossing of streets, avenues and alleys and intersecting with the Streets to be improved as herein described; and that it is in the best interests of the City of David City to create a street improvement district for the construction of the said improvements.

Section 2. There is hereby created within the City of David City, Nebraska, a street improvement district to be known and designated as Street Improvement District No. 2011-1, the outer boundaries of which shall contain the following property:

BEGINNING AT THE SOUTHEAST CORNER OF BLOCK 20 OF THE ORIGINAL TOWN OF DAVID CITY, SAID POINT ALSO BEING THE POINT OF INTERSECTION OF THE WEST RIGHT-OF-WAY (R.O.W.) LINE OF 3<sup>RD</sup> STREET AND THE NORTH R.O.W. LINE OF E STREET; THENCE EAST ALONG SAID NORTH R.O.W. LINE TO THE POINT OF INTERSECTION OF SAID NORTH R.O.W. LINE AND THE WEST LINE OF ALLEY R.O.W. BETWEEN 3<sup>RD</sup> STREET AND 4<sup>TH</sup> STREET; THENCE NORTH ALONG SAID WEST R.O.W. LINE TO THE POINT OF INTERSECTION OF THE NORTHERLY EXTENSION OF SAID WEST R.O.W. LINE AND THE NORTH LINE OF NEBRASKA CENTRAL RAILROAD R.O.W.; THENCE EAST ALONG SAID NORTH R.O.W. LINE TO THE POINT OF INTERSECTION OF SAID NORTH R.O.W. LINE AND THE EAST R.O.W. LINE OF 6<sup>TH</sup> STREET; THENCE SOUTH ALONG SAID EAST R.O.W. LINE TO THE POINT OF INTERSECTION OF SAID EAST LINE AND THE EASTERLY EXTENSION OF THE SOUTH LINE OF LOT 14, BLOCK 31 OF THE ORIGINAL TOWN OF DAVID CITY; THENCE WEST ALONG SAID EASTERLY EXTENSION TO THE SOUTHEAST CORNER OF SAID LOT 14; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 14 TO THE SOUTHWEST CORNER OF SAID LOT 14, SAID POINT ALSO BEING THE ON THE EAST LINE OF ALLEY R.O.W. BETWEEN 5<sup>TH</sup> STREET AND 6<sup>TH</sup> STREET; THENCE SOUTH ALONG SAID EAST R.O.W. LINE TO THE POINT OF INTERSECTION OF SAID EAST R.O.W. LINE AND THE SOUTH R.O.W. LINE OF C STREET; THENCE WEST ALONG SAID SOUTH R.O.W. LINE TO THE POINT OF INTERSECTION OF SAID SOUTH R.O.W. LINE AND THE WEST LINE OF ALLEY R.O.W. BETWEEN 3<sup>RD</sup> STREET AND 4<sup>TH</sup> STREET; THENCE NORTH ALONG SAID WEST R.O.W. LINE TO THE POINT OF INTERSECTION OF SAID WEST R.O.W. LINE AND THE SOUTH LINE OF ALLEY R.O.W. BETWEEN D STREET AND E STREET; THENCE WEST ALONG SAID SOUTH R.O.W. LINE TO THE POINT OF INTERSECTION OF THE WESTERLY EXTENSION OF SAID SOUTH R.O.W. LINE AND THE WEST R.O.W. LINE OF 3<sup>RD</sup> STREET; THENCE NORTH ALONG SAID WEST R.O.W. LINE TO THE POINT OF BEGINNING.

Within Street Improvement District No. 2011-1, 4<sup>th</sup> Street from the south line of C Street north to the north right-of-way line of the Nebraska Central Railroad Company trackage; 5<sup>th</sup> Street from the south line of C Street north to the north right-of-way line of the Nebraska Central Railroad Company trackage; 6<sup>th</sup> Street from the south line extended of Lot 14, Block 31, Original Town of David City, north to the north right-of-way line of the Nebraska Central Railroad Company trackage; C Street from the east line extended of the north/south alley in Block 31, Original Town of David City, west to the west line extended of the north/south alley in Block 33, Original Town of David City; D Street from the east line of 6<sup>th</sup> Street west to the west line extended of the north/south alley in Block 33, Original Town of David City; and E Street from the east line of 6<sup>th</sup> Street west to the west line of 3<sup>rd</sup> Street; including all areas formed by the crossing of streets, avenues and alleys and intersecting with the Streets to be improved as herein described shall be and are hereby ordered improved by construction of improvements therein consisting of removal of existing streets and related appurtenances as may be required; grading; construction of curb and gutter and concrete paving; repair or replacement of brick street surfaces; construction of parking areas, sidewalks and pedestrian walks and plazas; landscaping; street and pedestrian area lighting, signage and traffic controls; and, construction of storm drainage; together with other necessary appurtenant improvements as may be incidental thereto.

Section 3. All of said improvements shall be constructed to the established grades as fixed by ordinances of the City of David City, and shall be constructed in accordance with plans and specifications to be prepared by the City's Engineers, Olsson Associates, and approved by the Mayor and City Council. Said improvements shall be made at public cost, but special assessments shall be levied to reimburse the City for the cost of the improvements as provided by law.

Section 4. Notice of the creation of said Street Improvement District No. 2011-1 shall be published in the Banner Press, a legal newspaper of general circulation within the City of David City, for three weeks after the publication of this Ordinance.

Section 5. If any section, paragraph, clause, or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause, or provision shall not affect any of the other provisions of this Ordinance.

Section 6. This Ordinance shall be published and take effect as provided by law.

PASSED AND APPROVED this 9th day of March, 2011.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Interim City Clerk

Mayor Zavodny declared the public hearing open at 8:05 p.m. to consider an application to the Nebraska Department of Economic Development for a Community Development Block Grant.

Economic Development Director Keith Marvin stated that there is a downtown revitalization grant that is thorough DED (Dept. of Economic Development). It's a two phase process. We have to initially apply for up to \$30,000 for a planning element. We've already done a downtown plan. However, we still have to do the steps. We're going to do an expanded element of that plan with more public participation and getting more buy into the project if we are awarded this money. The nice thing about this is, if we are approved for the \$30,000 then they set aside \$350,000 to implement the plan. So, what you are doing tonight is requesting the money for the \$30,000 study so that we can move forward and do the additional planning and then get the \$350,000 toward the downtown project. Kevin Anderson at DED said that they were only going to have enough money for three or four of these projects in the state this year. You approved the resolution last month for the leadership community application which I am working on and should be transmitted by either tomorrow or Friday. It doesn't have to be approved when this grant goes in but it does have to be submitted.

Mayor Zavodny expressed his concerns about trying to get a grant since the City has not had the greatest track record with getting grants. He asked Keith what the chances were of getting the grant.

Economic Development Director Marvin stated that it depended on how many people submit an application. We have to get past the leadership community application. The other thing that you have to have is a blighted area and our downtown is already considered blighted and substandard. So, we have that hurdle already taken care of. He said that he wanted to warn them that when we submit this grant that we will need people to be involved because DED will come up and do a tour of the community, not just the downtown, but the entire community. We need to have people ready to speak and answer questions.

Lowell Schroeder with the Northeast Nebraska Economic Development District was present and stated that he felt that they had laid the ground work for a successful application process with the studies that they've done. Now, we are focusing on targeting and what really are the needs of the downtown area. We know, from the past, that we've talked about parking areas and the sidewalks, sign improvements, drainage, and replacement of the water lines. This is taking the next step and how to go about doing these projects.

Mayor Zavodny asked what the deadlines are for these grants.

Mr. Schroeder stated that this grant needs to be submitted to the Department of Economic Development by March 18<sup>th</sup>. The site visits will be in April and May and our staff will help Keith and the City staff as far as doing the planning and the preparation for that. The communities would be selected in June of 2011 and then there would be about six months for this study to take place and so then that would take you to around February or so and then on March 2, 2012 you submit the plan and whatever you're going to do in the next phase.

Keith Marvin stated that is usually a pretty quick turn around. Once you have the \$30,000 for the planning then they set aside the \$350,000 automatically.



Mayor Zavodny asked if this money was already committed and if it was contingent upon our revenue forecasts for the next year.

Lowell Schroeder stated that the funds were committed. He also stated that in the application that they would talk about some of the potential projects for the phase two and how that potentially could be financed. It's not a commitment to do that but they are looking at if phase two happens what options would there be, i.e. sales tax or paving district or those kinds of things.

Mayor Zavodny stated that if we submit this grant that we are really looking at a year long process.

Lowell Schroeder stated that it would be the summer of 2012 before construction begins.

Keith Marvin stated that we are on that timeline anyway with the downtown.

Lowell Schroeder also stated that one of the advantages of this program is that this area is already blighted. This is one of a very few programs that would be able to take advantage of being a blighted area without having the whole community to be 51% or more down the line.

Mayor Zavodny asked if applying for this grant would add a lot more onto our City staff.

Keith Marvin stated that he would anticipate not a lot more for them. It may be some things where Lowell and staff will probably have to work together to make sure that all the reports are done correctly and get things done as far as draw downs.

Lowell Schroeder stated that there would be grant administration money so if you contract with the district that would be available. We've been pretty successful with these in the past. Currently, Scribner and Hartington are working with us on projects. So, our staff is part of that administration. We would administer the grant and assist with the project. The important thing after this would be, before the grant deadline, it would be important to have letters of support from the businesses and property owners particularly in the affected area.

Former Mayor Trowbridge stated that David City is light years ahead of other people that are talking about doing this because a study has been done in its entirety. We now have \$30,000 coming in that if we need to do some clerical things that those would be part of the planning process. There are a lot of things in this one that don't need to be done with that \$30,000 that would need to be done in another community.

Lowell Schroeder stated that you don't think of it as redoing the downtown improvement plan, it's just that we are moving forward a lot farther than if somebody had to start from scratch.

Former Mayor Trowbridge also stated the fire, water, public safety and handicapped accessibility have got to have a severe magnitude in this project.

Mayor Zavodny stated that we have to be ready to roll on this tomorrow morning if this is what the council decides to do. That is a very short amount of time.

Lowell Schroeder stated that looking at the community, you've done some projects to show that you've got a commitment on this other project. We've pulled in the tourism aspect.

Mayor Zavodny asked how that piece would fit in.

Lowell Schroeder stated that we have the Opera House façade improvements and the museum.

Keith Marvin stated that the last action that they took shows commitment by the council and gives us even more points.

Mayor Zavodny declared the public hearing closed at 8:17 p.m.

Council member Kroesing introduced Resolution No. 11- 2011 and moved for its passage and adoption. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Rogers, Scribner, Smith, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried and Resolution No. 11 - 2011 was passed and approved as follows:

## **RESOLUTION AUTHORIZING CHIEF ELECTED OFFICIAL TO SIGN AN APPLICATION FOR CDBG FUNDS**

### **RESOLUTION NO. 11 – 2011**

Whereas, the City of David City, Nebraska, is an eligible unit of a general local government authorized to file an application under the Housing and Community Development Act of 1974 as Amended for Small Cities Community Development Block Grant Program, and,

Whereas, the City of David City, Nebraska, has obtained its citizens' comments on community development and housing needs; and has conducted public hearing(s) upon the proposed application and received favorable public comment respecting the application which for an amount of \$30,000 of which \$28,100 will be used for a downtown revitalization plan and \$1,900 will be used for general administration. Total budget is \$39,400 with the City providing \$9,400 in matching funds and,

NOW THEREFORE, BE IT RESOLVED BY

The City Council of the City of David City, Nebraska that the Mayor, Alan Zavodny, be authorized and directed to proceed with the formulation of any and all contracts, documents or other memoranda between the City of David City and the Nebraska Department of Economic Development so as to effect acceptance of the grant application and the required Release of Fund documents for Community Development Block Grant Funds.

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Signed

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Mayor  
Title

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Date

Council member Kroesing introduced Ordinance No. 1138. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Rogers seconded the motion. Voting AYE: Council members Scribner, Svoboda, Rogers, Smith, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1138 on the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Scribner, Rogers, Smith, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried and Ordinance No. 1138 was passed and adopted as follows:

**Ordinance No. 1138**

**An ordinance establishing a franchise tax on natural gas companies  
operating in the City of David City, Nebraska**

Be it ordained by the City of David City, Nebraska:

The City of David City, Nebraska, (hereinafter referred to as the "Municipality") hereby establishes a franchise tax on every natural gas company and every other person, firm or corporation, their successors and assigns, owning, operating, controlling, leasing or managing a natural gas plant or system and/or generating, manufacturing, selling, distributing or transporting natural gas (hereinafter referred to, collectively, as "Energy Providers," each, individually, an "Energy Provider"). Energy Providers shall collect from their customers located within the corporate limits of the Municipality and pay to the Municipality an amount equal to five percent (5 %) of gross receipts Energy Providers derive from the sale, distribution or transportation of natural gas delivered within the present or future limits of the Municipality. Gross receipts as used herein are revenues received from the sale, distribution or transportation of natural gas, after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered. The amount paid by Energy Providers shall be in lieu of, and Energy Providers shall be exempt from, all other fees, charges, taxes or assessments which the Municipality may impose for the privilege of doing business within the Municipality, including without limitation excise taxes, occupation taxes, licensing fees, or right-of-way permit fees, and in the event the Municipality imposes any such fees, charge, tax or assessment, the payment to be made by Energy Providers in accordance with this Ordinance shall be reduced in an amount equal to any such fee, charge, tax or assessment imposed upon the Energy Providers. Ad valorem property taxes imposed generally upon all real and personal property within the Municipality shall not be deemed to affect Energy Providers' obligations under this Ordinance.

Energy Providers shall report and pay any amount payable under this Ordinance on a semi-annual basis. Such payment shall be made no more than thirty (30) days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of any franchise granted by the City of David City, Nebraska, to an Energy Provider.

Energy Providers shall list the franchise tax collected from customers as a separate item on bills for utility service issued to their customers. If at any time the Nebraska Public Service Commission or other authority having proper jurisdiction prohibits such recovery, Energy Providers will no longer be obligated to collect and pay the franchise tax.

The Municipality shall provide copies of annexation ordinances to Energy Providers on a timely basis to ensure appropriate franchise tax collection from customers within the Municipality's corporate limits. An Energy Provider's obligation to collect and pay the franchise tax from customers within an annexed area shall not commence until the later: (a) of sixty (60) days after such Energy Provider's receipt of the annexation ordinance pertaining to such area, or (b) such time as is reasonably necessary for such Energy Provider to identify the customers in the annexed area obligated to pay the franchise tax.

The Municipality shall have access to and the right to examine, during normal business hours, such of an Energy Provider's books, receipts, files, records and documents as is necessary to verify the accuracy of payments due hereunder. If it is determined that a mistake was made in the payment of any franchise tax required hereunder, such mistake shall be corrected promptly upon discovery, such that any under-payment by an Energy Provider shall be paid within thirty (30) days of recalculation of the amount due, and any over-payment by an Energy Provider shall be deducted from the next payment of such franchise tax due by such Energy Provider to the Municipality.

Passed and approved by the City Council of the City of David City, Nebraska on this 9<sup>th</sup> day of March, 2011.

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Alan Zavodny, Mayor of the City of  
David City, Nebraska

Attest:

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Tami L. Comte, Interim City Clerk of the City of David City, Nebraska

Council member Smith introduced Ordinance No. 1139. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate

days. Council member Scribner seconded the motion. Voting AYE: Council members Scribner, Svoboda, Rogers, Smith, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried.

Council member Smith made a motion to pass and adopt Ordinance No. 1139 on the third and final reading. Council member Kroesing seconded the motion. Voting AYE: Council members Svoboda, Scribner, Rogers, Smith, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried and Ordinance No. 1139 was passed and adopted as follows:

**Ordinance No. 1139**

**An Ordinance granting Black Hills/Nebraska Gas Utility Company, LLC d/b/a Black Hills Energy, a Delaware limited liability company, its lessees, successors and assigns, a natural gas and landfill gas franchise and the authority to construct, operate, maintain, and extend a natural gas or landfill gas distribution plant and system, and granting the right to use the streets, alleys, and other public places within the present or future corporate limits of the City of David City, Nebraska**

Be it ordained by the City Council of the City of David City, NE, as follows:

**FRANCHISE GRANTED**

The City of David City, NE (hereinafter referred to as "Grantor"), hereby grants a non-exclusive franchise to Black Hills/Nebraska Gas Utility Company, LLC d/b/a Black Hills Energy, a Delaware limited liability company (hereinafter called "Grantee"), its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to lay, construct, install, maintain, operate and extend in, along, over or across the present and future streets, alleys, avenues, bridges, public rights-of-way and public places as are now within the present or future limits of said Grantor, a natural gas or landfill gas distribution system and all facilities necessary for the purpose of supplying natural gas, landfill gas, or processed gas and other operations connected therewith or incident thereto for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of natural gas or landfill gas from or through said Grantor to points beyond the limits thereof. Such facilities shall include, but not be limited to, all mains, services, pipes, conduits and all other apparatus and appliances necessary or convenient for transporting, distributing and supplying natural gas or landfill gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas or landfill gas service to the inhabitants of Grantor and in carrying on such business.

**TERM**

The rights and privileges granted hereunder shall remain in effect for a period of twenty five (25) years commencing on the effective date of this Ordinance, with an option to extend the term an additional twenty-five years commencing at the expiration of this franchise in the year 2033.

#### **GOVERNING RULES AND REGULATIONS**

The franchise granted hereunder is subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by state or federal law. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee, shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body having proper jurisdiction take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this Ordinance in accordance with the action taken, so as to allow Grantee to be made economically whole. In determining the rights and duties of the Grantee, the terms of this Ordinance shall take precedence over any conflicting terms or requirements contained in any other ordinance enacted by the Grantor.

#### **PROVISION FOR INADEQUATE ENERGY SUPPLIES**

If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

#### **CONSTRUCTION AND MAINTENANCE OF GRANTEE'S FACILITIES**

Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of Grantor and the general public as is reasonably necessary, and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good as condition as existed immediately prior to excavation.

Grantee agrees that for the term of this franchise, it will use its best efforts to maintain its facilities and equipment in a condition sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance, except that in emergency situations Grantee shall take such immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible.

Grantor will give Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affects Grantee's facilities. The notice shall

contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements, and the time when the Grantor will start the work, and, if more than one right-of-way is involved, the order in which the work is to proceed. The notice shall be given to the Grantee a sufficient length of time in advance of the actual commencement of the work, considering seasonable working conditions, to permit the Grantee to make any additions, alterations, or repairs to its facilities.

#### **EXTENSION OF GRANTEE'S FACILITIES**

Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor.

#### **RELOCATION OF GRANTEE'S FACILITIES**

If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, at the cost and expense of Grantee, if such removal is necessary to prevent interference and is not merely for the convenience of the Grantor. If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference with facilities and is not merely for the convenience of the Grantor or other right-of-way user, Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment. Grantor shall consider reasonable alternatives in designing its public works projects and exercising its authority under this section so as not to arbitrarily cause Grantee unreasonable additional expense. Grantor shall also provide a reasonable alternative location for Grantee's facilities. Grantor shall give Grantee written notice of an order or request to vacate a public right-of-way; provided, however, that its receipt of such notice shall not deprive Grantee of its right to operate and maintain its existing facilities in such public right-of way until it receives the reasonable cost of relocating the same and Grantor provides a reasonable alternative location for such facilities.

Any person or corporation desiring to move a building or other structure along, or to make any unusual use of, any street, alley, avenue, bridge, public right-of-way or public place which shall interfere with the facilities or equipment of the Grantee, shall first give notice to the Grantor and the Grantee and pay a sum sufficient to cover the expense of moving Grantee's facilities and equipment in such location, and any damages incident thereto.

#### **CONFIDENTIAL INFORMATION**

Grantor acknowledges that certain information it might request from Grantee pursuant to this Ordinance may be of a proprietary and confidential nature, and that such requests may be subject to the Homeland Security Act or other confidentiality protections under state or federal law. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to its proprietary or commercial value, Grantor and its employees, agents and representatives shall maintain the confidentiality of such information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such proprietary or confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief.

### **FORCE MAJEURE**

It shall not be a breach or default under this Ordinance if either party fails to perform its obligations hereunder due to force majeure. Force majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and (4) any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid force majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance of its obligations hereunder; provided, however, that this provision shall not obligate a party to settle any labor strike.

### **HOLD HARMLESS**

Grantee, during the term of this Ordinance, agrees to save harmless Grantor from and against (1) all claims, demands, losses and expenses arising directly out of the construction, operation, and maintenance of its natural gas distribution and transmission facilities or appliances by Grantee, its employees, contractors, or agents, or (2) all claims, demands, losses, and expenses arising directly out of the negligence of Grantee, its employees, contractors, or agents; provided, however, that Grantee need not save Grantor harmless from claims, demands, losses and expenses arising out of the negligence of Grantor, its employees, contractors, or agents.

Grantor, during the term of this Ordinance, agrees to save harmless Grantee from and against (1) all claims, demands, losses and expenses arising directly out of the construction, operation, and maintenance of Grantor's landfill gas distribution and transmission facilities or appliances by Grantor, its employees, contractors, or agents or (2) all claims, demands, losses, and expenses arising directly out of the negligence of Grantor, its employees, contractors, or agents; provided, however, that Grantor need not save Grantee harmless from claims, demands, losses and expenses arising out of the negligence of Grantee, its employees or agents

### **SUCCESSORS AND ASSIGNS**

All rights, privileges and authority granted to Grantee hereunder shall inure to the benefit of Grantee's lessees, successors and assigns, subject to the terms, provisions and conditions herein contained, and all obligations imposed upon Grantee hereunder shall be binding upon Grantee's lessees, successors and assigns.

### **NO THIRD PARTY BENEFICIARIES**

This Ordinance constitutes a franchise agreement between the Grantor and Grantee. No provision of this Ordinance shall inure to the benefit of any third person, including the public at large, so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.

### **SEVERABILITY**



If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

**NON WAIVER**

Any waiver of any obligation or default under this Ordinance shall not be construed as a waiver of any future defaults, whether of like or different character.

**REPEAL CONFLICTING ORDINANCES**

This Ordinance, when accepted by Grantee as provided below, shall constitute the entire agreement between the Grantor and the Grantee relating to the franchise granted by Grantor hereunder, and the same shall supersede all prior ordinances relating thereto, and any terms and conditions of such prior ordinances or parts of ordinances in conflict herewith are hereby repealed. Ordinance No. 823 of the City of David City, NE, is hereby repealed as of the effective date hereof.

**EFFECT AND INTERPRETATION OF ORDINANCE**

The captions that precede each section of this Ordinance are for convenience and/or reference only and shall not be taken into consideration in the interpretation of any of the provisions of this Ordinance.

**EFFECTIVE DATE AND ACCEPTANCE**

This Ordinance shall become effective and be a binding contract between the Grantor and Grantee upon its final passage and approval by Grantor, in accordance with applicable laws and regulations, and upon Grantee's acceptance by written instrument, within sixty (60) days of passage by the City Council, and filing with the Clerk of the City of David City, NE. The Clerk of the City of David City, NE shall sign and affix the community seal to acknowledge receipt of such acceptance, and return one copy to Grantee. If Grantee does not, within sixty (60) days following passage of this Ordinance, either express in writing its objections to any terms or provisions contained therein, or reject this Ordinance in its entirety, Grantee shall be deemed to have accepted this Ordinance and all of its terms and conditions.

Passed and approved by the City Council of the City of David City, NE, this 9<sup>th</sup> day of March, 2011.

\_\_\_\_\_  
Alan Zavodny, Mayor of the City of David  
City, Nebraska

Attest:

\_\_\_\_\_  
Tami L. Comte, Interim City Clerk  
of the City of David City, NE

Council member Smith introduced Ordinance No. 1140. Council member Rogers made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Kroesing seconded the motion. Voting AYE: Council members Scribner, Svoboda, Rogers, Smith, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1140 on the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Scribner, Rogers, Smith, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried and Ordinance No. 1140 was passed and adopted as follows:

### **ORDINANCE NO. 1140**

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 1, OF THE CITY OF DAVID CITY, NEBRASKA, MUNICIPAL CODE BOOK BY AMENDING §6-101 INCREASING THE LICENSE FEES FOR DOGS; 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. Article 1 of Chapter 6 of the David City Municipal Code Book be amended to read as follows:

#### **Chapter 6**

#### **POLICE REGULATIONS**

#### **Article 1. Dogs**

**§6-101** **DOGS; LICENSE.** Any person who shall own, keep, or harbor a dog over the age of six (6) months within the Municipality shall within thirty (30) days after acquisition of the said dog acquire a license for each such dog. The renewal date for a dog license shall be the first (1<sup>st</sup>) day of January of each year. The said tax shall be delinquent from and after January tenth (10<sup>th</sup>); Provided, the possessor of any dog brought into or harbored within the corporate limits subsequent to January first (1<sup>st</sup>) of any year, shall be liable for the payment of the dog tax levied herein and such tax shall be delinquent if not paid within ten (10) days thereafter. Licenses shall be issued by the Municipal Clerk upon the payment of **a license fee of ten (\$10.00) dollars for each spayed or neutered dog, and twenty (\$20.00) for each dog not spayed or neutered.** Said license shall not be transferable and no refund will be allowed in case of death, sale, or other disposition of the licensed dog. The owner shall state at the time the application is made and upon printed forms provided for such purpose, his name and address and the name, breed, color, and sex of each dog owned and kept by him. A certificate that the dog has had a rabies shot, effective for the ensuing year of the license, shall be presented when the license is applied for and no license or tag shall be issued until the certificate is shown. (Ref. 17-526, 54-603, 71-4412 RS Neb.)

As per Legislative Bill 910, Any county, city, or village that imposes a license tax on the owner or harbored of any cat or cats or any dog or dogs under this section shall collect from the licensee a fee of one dollar. This is included in the license fees listed above.

- §6-102** **DOGS; LICENSE TAGS.** Upon the payment of the license fee, the Municipal Clerk shall issue to the owner of a dog license certificate and a metallic tag for each dog so licensed. The metallic tags shall be properly attached to the collar or harness of all dogs so licensed and shall entitle the owner to keep or harbor the said dog until the thirty-first (31<sup>st</sup>) day of December following such licensing. In the event that a license tag is lost and upon satisfactory evidence that the original tag was issued in accordance with the provisions herein, the Municipal Clerk shall issue a duplicate or new tag for the balance of the year at no charge. All license fees and collections shall be immediately credited to the General Fund. It shall be the duty of the Municipal Clerk to issue tags of a suitable design that are different in appearance each year.
- §6-103** **DOGS; WRONGFUL LICENSING.** It shall be unlawful for the owner, keeper, or harbored of any dog to permit or allow such dog to wear any license, metallic tag or other Municipal Identification than that issued by the Municipal Clerk for dogs, nor shall the owner, keeper, or harbored wrongfully and knowingly license an un-spayed or un-neutered dog with a license prescribed for a neutered or spayed dog.
- §6-104** **DOGS; OWNER DEFINED.** Any person who shall harbor or permit any dog to be for ten (10) days or more in or about his or her house, store, or enclosure, or to remain to be fed, shall be deemed the owner and possessor of such dog and shall be deemed liable for all penalties herein prescribed. (*Ref. 54-606, 71-4401 RS Neb.*)
- §6-105** **DOGS; PROCLAMATION.** It shall be the duty of the Governing Body whenever in its opinion the danger to the public safety from rabid dogs is great or imminent, to issue a proclamation ordering all persons owning, keeping, or harboring any dog to muzzle the same, or to confine it for a period of not less than thirty (30) days or more than ninety (90) days from the date of such proclamation, or until such danger is passed. The dogs may be harbored by any good and sufficient means in a house, garage, or yard on the premise wherein the said owner may reside. Upon issuing the proclamation it shall be the duty of all persons owning, keeping, or harboring any dog to confine the same as herein provided.
- §6-106** **DOGS; UN-COLLARED.** All dogs found running at large upon the streets and public grounds of the Municipality without a collar or harness are hereby declared a public nuisance. Un-collared dogs found running at large may be killed by the Municipal Police. (*Ref. 54-604 RS Neb.*)
- §6-107** **DOGS; RUNNING AT LARGE.** It shall be unlawful for the owner of any dog, whether licensed or unlicensed, to allow such dog to run at large in the Municipality. "Running at Large" shall mean any dog found off the premise of the owner, and not under control of the owner or a responsible person, either by leash, cord, chain, wire, rope, cage or other suitable means of physical restraint.

- §6-108** **DOGS; IMPOUNDMENT FEES WHEN DOGS LICENSED OR UNLICENSED ARE IMPOUNDED.** Impoundment of dogs within the City of David City, Nebraska, shall be accomplished by the Municipal Police or person designated by the Mayor when found "running at large." There shall be a boarding fee for each day the dog is impounded by the City, which shall be the responsibility of the owner. In addition there shall be a general impoundment fee of five dollars (\$5.00) for the first impoundment of a dog during any license year; then ten dollars (\$10.00) for the second impoundment during any license year; fifteen dollars (\$15.00) for the third impoundment during any license year.  
All such fees, together with proof that a dog is licensed in accordance with the provisions of this Chapter, before any dog is released. When all fees have been paid to the City, the dog may be returned to the owner.
- §6-109** **DOGS; CAPTURE IMPOSSIBLE.** The Municipal Police shall have the authority to kill any animals showing vicious tendencies, or characteristics of rabies which make capture impossible because of the danger involved. (*Ref. 54-605 RS Neb.*)
- §6-110** **DOGS; VICIOUS.** It shall be unlawful for any person to own, keep, or harbor any dog of a dangerous or ferocious disposition that habitually snaps or manifests a disposition to bite. If any vicious or dangerous dog is allowed to run at large, the Municipal Police shall have the authority to put the dog to death. Upon the complaint of one (1) or more affected persons, filed with the Municipal Police Department, that any dog owned by the person named in the complaint is committing injury to persons or property, or is an annoyance, dangerous, offensive or unhealthy, the Municipal Police Department shall investigate the complaint and, if in their opinion the situation warrants, shall notify the owner to dispose of the dog. If the Municipal Police Department is unable to locate the owner of the dog, or if the owner of the dog fails to restrain such dog, the Municipal Police Department shall take custody of the dog, and impound said dog. The owner of the dog shall be required to pay impoundment fees as set forth in Municipal Code 6-107.01, before the dog will be released.
- §6-111** **DOGS; INTERFERENCE WITH POLICE.** It shall be unlawful for any person to hinder, delay, or interfere with any Municipal Policeman who is performing any duty enjoined upon him by the provisions of this Article. (*Ref. 28-729 RS Neb.*)
- §6-112** **DOGS; KILLING AND POISONING.** It shall be unlawful to kill, or to administer, or cause to be administered, poison of any sort to a dog, or in any manner to injure, maim, or destroy, or in any manner attempt to injure, maim, or destroy any dog that is the property of another person, or to place any poison, or poisoned food where the same is accessible to a dog.
- §6-113** **DOGS; BARKING AND OFFENSIVE.** It shall be unlawful for any person to own, keep, or harbor any dog which by loud, continued, or frequent barking, howling, or yelping shall annoy or disturb any person or neighborhood, or which habitually barks at or chases pedestrians, drivers, or owners of horses or vehicles while they are on any public sidewalks, streets, or alleys in the Municipality. Upon the complaint of one (1) or more affected persons from different households, that any dog owned by the person named in the complaint is an annoyance or disturbance, or otherwise violates the provisions of this section of the Municipal Code, the Police shall

investigate the complaint and, if in the opinion the situation warrants, shall notify the owner to silence and restrain such dog. If the Police Department is unable to locate the owner of the dog, or if the owner of the dog fails to silence and restrain such dog, the Police Department may take custody of the dog, and impound such dog. The owner of the dog shall be required to pay impoundment fees as set forth in Municipal Code 6-107.01, before the dog will be released.

**§6-114 DOGS; LIABILITY OF OWNER.** It shall be unlawful for any person to allow a dog owned, kept, or harbored by him, or under his charge or control, to injure or destroy any real or personal property of any description belonging to another person. The owner or possessor of any such dog, in addition to the usual judgment upon conviction, may be made to be liable to the persons so injured in an amount equal to the value of the damage so sustained. (*Ref. 54-601, 54-602 RS Neb.*)

**§6-115 DOGS; REMOVAL OF TAGS.** It shall be unlawful for any person to remove or cause to be removed, the collar, harness, or metallic tag from any licensed dog without the consent of the owner, keeper, or possessor thereof.

Section 2. That any ordinance or section of any ordinance passed and approved prior to or subsequent to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby appealed.

Section 3. This ordinance shall be published in pamphlet form and shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

PASSED AND APPROVED this 9<sup>th</sup> day of March, 2011.

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Mayor Alan Zavodny

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Interim City Clerk Tami L. Comte

Council member Kroesing introduced Ordinance No. 1141. Council member Rogers made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Svoboda seconded the motion. Voting AYE: Council members Scribner, Svoboda, Rogers, Smith, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1141 on the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Scribner, Rogers, Smith, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried and Ordinance No. 1141 was passed and adopted as follows:

**ORDINANCE NO. 1141**

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 2, OF THE CITY OF DAVID CITY, NEBRASKA, MUNICIPAL CODE BOOK, TO UPDATE THE QUALIFICATION REQUIREMENTS FOR THE CITY ADMINISTRATOR'S POSITION; 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 1, Article 2, of the David City Municipal Code Book shall be amended to read:

**Article 2. Appointed Officials**

§ Section 1. Chapter 1: Administrative of the David City Municipal Code Book be amended to read as follows:

**Chapter 1  
ADMINISTRATIVE**

**Article 1. Elected Officials**

**§1-101** **CITY MAYOR; SELECTION AND DUTIES**. The Mayor of the Municipality shall have the general and immediate control over all property, and officials, whether elected, or appointed, of the Municipality. He or she shall preside at all meetings of the City Council, and may vote when his vote shall be decisive and the Council is equally divided on any pending matter, legislation, or transaction and the Mayor shall, for the purpose of such vote, be deemed to be a member of the Council. His or her signature must appear on the City Clerk's minutes of all meetings, and he or she must sign all resolutions which have been passed, and warrants for the payment of money when ordered by the City Council; Provided, any ordinance vetoed by the Mayor may be passed over his veto by a two-thirds (2/3) vote by the members of the City Council, but if the Mayor neglects or refuses to sign any ordinance, and returns it to the Council with his or her objections in writing at the next regular Council meeting, the same shall become a law without his signature. He or she shall from time to time communicate to the Council such information and recommendations as, in his opinion, may improve the Municipality. He or she may require at reasonable intervals any city official to exhibit his or her accounts and make reports to the Council on any subject pertaining to his or her office. He or she shall have the power to remit fines or pardon any offense arising under the ordinances of the Municipality. He or she may remove at any time an appointed police officer of the Municipality. His or her territorial authority shall extend over all places within five (5) miles of the corporate limits of the Municipality for the enforcement of any health ordinance, and one half (1/2) mile in all matters vested in him or her except taxation. He or she shall also have such other duties as the City Council may by resolution confer upon him or her, or in any other matters which the laws of the State of Nebraska repose in him or her. He or she shall be elected at the Municipal Election, and shall serve a four (4) year term of office. The Mayor shall be a resident and registered voter of the city. (*Neb. RS 17-107, 17-110 thru 17-117*)

**§1-102**    **CITY COUNCIL; ACTING PRESIDENT.** The City Council shall elect one (1) of its own body each year who shall be styled the President of the Council, and who shall preside at all meetings of the City Council in the absence of the Mayor. In the absence of the Mayor, and the President of the Council, the City Council shall elect (1) of its own body to occupy his place temporarily, who shall be styled Acting President of the Council. Both the President of the Council and the Acting President of the Council, when occupying the position of the Mayor, shall have the same privileges as the other members of the City Council, and all acts of the President of the Council, or Acting President of the Council, while so acting, shall be binding upon the City Council, and upon the Municipality as if done by the elected Mayor. *(Neb. RS 17-148)*

**§1-103**    **CITY COUNCIL; SELECTION AND DUTIES.** The members of the City Council shall be elected and serve for a four (4) year term. The City Council shall be the legislative division of the Municipal Government, and shall perform such duties, and have such powers as may be authorized by law. The City Council shall maintain the peace, regulate business, protect the public health and safety, and assess such taxes and fees as are necessary and appropriate in the exercise of these functions. *(Neb. RS 17-103, 17-104)*

**§1-104**    **CITY COUNCIL; ORGANIZATION.** City Council members of this Municipality shall take office, and commence their duties on the first regular meeting in December following their election. The newly elected Council members who have qualified as prescribed by law, together with the members of the City Council holding over, shall assemble in a regular meeting at the hour and place hereinafter prescribed and perfect the reorganization of the City Council as herein provided, and all appointive offices in which the terms of incumbents are expired shall be filled by appointment. After the said meeting has been called to order, the Municipal Clerk shall report to the City Council the names of all City Council members-elect who have qualified for their respective offices, and this report shall be spread upon the minutes of the meeting preceding the roll call. Each ward of the Municipality shall be represented by at least two (2) Council members. No person shall be eligible who is not at the time of his election an actual resident of the ward for which he is qualified and should any City Council member move from the ward from which he was elected, his office shall thereby become vacant. *(Neb. RS 17-104)*

**§1-105**    **ELECTED OFFICIALS; VACANCY**

- (A) Every elective office shall be vacant upon the happening of any of the events specified in Neb. RS 32-560 except as provided in Neb. RS 32-561. *(Neb. RS 32-560)*
- (B) In the case of any vacancy in the office of Mayor, or in case of his or her disability or absence, the President of the Council shall exercise the office of Mayor for the unexpired term until such vacancy is filled or such disability is removed, or in case of temporary absence, until the Mayor returns. If the President of the Council assumes the office of Mayor for the unexpired term, there shall be a vacancy on the Council. *(Neb. RS 32-568(4))*

- (C) (1) Except as otherwise provided in subsections (B), (D), or (E) of this section, vacancies in city elected offices shall be filled by the Mayor and City Council for the balance of the unexpired term. Notice of a vacancy, except a vacancy resulting from the death of the incumbent, shall be in writing and presented to the Council at a regular or special meeting and shall appear as a part of the minutes of such meeting. The Council shall at once give public notice of the vacancy by causing to be published in a newspaper of general circulation within the city or by posting in three public places in the city the office vacated and the length of the unexpired term.
- (2) The Mayor shall, within four weeks after the meeting at which such notice of vacancy has been presented or upon the death of the incumbent, call a special meeting of the Council or place the issue of filling such vacancy on the agenda at the next regular meeting at which time the mayor shall submit the name of a qualified registered voter to fill the vacancy for the balance of the unexpired term. The Council shall vote upon such nominee, and if a majority votes in favor of such nominee, the vacancy shall be declared filled. If the nominee fails to receive a majority of the votes, the nomination shall be rejected and the Mayor shall, at the next regular or special meeting, submit the name of another qualified registered voter to fill the vacancy. If the subsequent nominee fails to receive a majority of the votes, the Mayor shall continue at such meeting to submit the names of qualified registered voters in nomination and the Council shall continue to vote upon such nominations until the vacancy is filled. The Mayor shall cast his or her vote for or against the nominee in the case of a tie vote of the Council. All Council members present shall cast a ballot for or against the nominee. Any member of the Council who has been appointed to fill a vacancy on the Council shall have the same rights, including voting, as if such person were elected.
- (D) The Mayor and Council may, in lieu of filling a vacancy in a city elected office as provided in subsection (C) of this section, call a special city election to fill such vacancy.
- (E) If vacancies exist in the offices of a majority of the members of the City Council, the Secretary of State shall conduct a special city election to fill such vacancies. (Neb. RS 32-569)

**§1-106      VACANCY DUE TO UNEXCUSED ABSENCES**

- (A) In addition to the events listed in Neb. RS 32-560 and any other reasons for a vacancy provided by law, after notice and a hearing, a vacancy on the City Council shall exist if a member is absent from more than five consecutive regular meetings of the council unless the absences are excused by a majority voted of the remaining members.  
*(Neb. RS 19-3101)*
- (B) The City Council shall take a vote on whether to excuse a member's absence from a meeting upon either (1) a written request from the member submitted to the City Clerk or (2) a motion of any other council member.



- (C) If a council member has been absent from six consecutive regular meetings and none of the absences have been excused by a majority vote of the remaining members, the City Clerk shall include this as an item on the agenda for the next regular meeting. At that meeting, the council shall set a date for a hearing and direct the City Clerk to give the member notice of the hearing by personal service of first class mail to the member's last-known address.
- (D) At the hearing, the council member shall have the right to present information on why one or more of the absences should be excused. If the council does not excuse one or more of the member's absences by a majority vote at the conclusion of the hearing, there shall be a vacancy on the council.

**§1-107**     **ELECTED OFFICIALS; MAYOR; VACANCY.** Whenever a vacancy occurs in the office of Mayor, or in case of his disability or absence, the President of the Council shall exercise the office of Mayor until such vacancy is filled or such disability is removed, or in case of temporary absence, until the Mayor returns. When the successful candidate for Mayor shall be prevented from assuming office, the incumbent mayor shall not be entitled to hold over the term, but such office shall automatically become vacant and the President of the Council shall exercise the office of Mayor until such vacancy is filled. If the President of the Council shall for any cause assume the office of Mayor for the remainder of the unexpired term, there shall be a vacancy on the Council which shall be filled as provided in section 1-105.

## **Article 2. Appointed Officials**

**§1-201**     **APPOINTED OFFICIALS; GENERAL AUTHORITY.**

- (A) The Mayor, by and with the consent of the City Council, may appoint a City Administrator, City Clerk, Deputy City Clerk, City Treasurer, City Attorney, City Physician, City Police Chief, City Street Commissioner, City Electric Supervisor, City Electric Plant Supervisor, City Water Supervisor, City Wastewater Supervisor, City Zoning Administrator, City Engineer, City Park and Recreation Superintendent. These positions are considered Discretionary At-Will Employees; they are to be selected on merit and serve at the pleasure of the Mayor. These appointments will function on a continual basis until retirement, resignation, or removal by the Mayor.

The Mayor, with the consent of the City Council, shall appoint such number of regular police officers as may be necessary. The City Council may establish and provide for the appointment of members of a law enforcement reserve force as provided by law. (*Neb. RS 17-107*)

- (B) All police officers, including the Chief of Police, and other appointed officials may be removed at any time by the Mayor.

The City Council may, at their discretion, review any termination or removal from service of any appointed official by the Mayor. The Council may uphold, reverse, or modify the removal or termination from service.

All police officers, including the chief of police, may appeal such removal, demotion, or suspension to the city council in accordance with Neb. RS 17-107. After a hearing, the city council may uphold, reverse, or modify the removal or disciplinary action. (*Neb. RS 17-107*)

**§1-202**     **APPOINTED OFFICIALS; CITY ADMINISTRATOR ESTABLISHED.** The office of Administrator of the City of David City, Nebraska is hereby established as provided by law. Such officer shall be appointed by the Mayor with the approval of a majority of the City Council and may be removed at any time by the Mayor with the approval of a majority of the City Council. The salary of the Administrator shall be fixed by resolution and shall be payable monthly.

**§1-202.01**   **APPOINTED OFFICIALS; CITY ADMINISTRATOR; DUTIES AND RESPONSIBILITIES**

The City Administrator shall be appointed by the Mayor, with the approval of a majority of the City Council.

The Administrator directs and supervises all departments of City government, and is responsible for the City's compliance with all statutes, codes, ordinances, and policies.

The Administrator works under legislative direction of the City Council and administrative direction of the Mayor. He/she is to be available to citizens and employees during normal business hours.

**Administrative duties** of the City Administrator include the following:

Attend all meetings of the City Council and report on matters concerning city affairs under his/her supervision and direction. Keep the Council informed regarding operations and problems and recommend solutions.

Direct the preparation of agendas and agenda packets for the Mayor, Council, and other persons requesting such information.

Attend meetings of departments and officials relevant to city affairs, or as directed by the Mayor and Council.

Evaluate all City business and projects and make recommendations to the Mayor and Council for the adoption of measures and ordinances deemed necessary for the good government of the City.

Continuously monitor and evaluate the efficiency and effectiveness of the City's organization structure, staffing patterns, service levels and administrative systems, and work with the Mayor and Council to implement necessary improvements.

Prepare and present periodic reports on the City's operation.

Initiate, prepare and present studies and research reports.

Supervise contracts and bids.

Maintain contact with State and Federal agencies in all matters regarding the City, analyze the City's position on State and Federal legislation which may impact the City, and communicate the city's position to appropriate individuals and committees of the State and Federal Government.

Obtain information concerning Federal and State funds available to the City. Identify qualifying need areas and implement necessary procedures to obtain such funds if so directed by the Mayor and Council.

Advise citizens, property owners, contractors, and others on questions relating to City code.

Attend authorized meetings and seminars that provide continuing education in matters relating to City administration.

## II.

**Financial duties** of the City Administrator include the following:

Keep the Mayor and Council fully advised on the financial condition of the City.

Prepare annual estimates of revenues and expenditures and submit a proposed budget of a complete financial plan for the City to the Mayor and Council 30 days prior to the consideration and adoption of the annual budget by the Council.

Supervise authorized budget expenditures.

Present monthly reports to the Council regarding current budget and expenditures.

Evaluate all City revenues and make suggestions and recommendations on rates and prices charged for all City services.

Review all employee benefits and recommend changes as needed.

Prepare insurance specifications for the City and obtain bids.

Assist accountants with questions regarding the yearly audit.

Be responsible for long-range financial planning.

Investigate and report on alternate revenue sources for City projects.

## III.

Duties of the City Administrator regarding **Personnel** include the following:

Plan, coordinate, and supervise personnel matters for all departments of the City.

Keep the City Personnel Handbook up-to-date and accurate according to changing laws and regulations.

Recommend to the Mayor and Council the appointment and dismissal of appointed personnel.

In coordination with appropriate department heads, is responsible for the appointment and dismissal of all subordinate employees in departments over which he/she exercises jurisdiction.

Provide for the transfer of workers between departments to meet varying workload emergencies.

Build good employee relations.  
Hold periodic staff meetings with all department heads and employees.

Supervise the City's annual written employee evaluation process.

Conduct an annual review of the City's class specifications and compensation plan for all employees and recommend changes as needed.

#### **IV.**

**Community Development** duties of the City Administration include the following:

Oversee and assist in the development of long-range and short-range plans for the City, developing goals, objectives, and priorities. Keep department heads involved and informed concerning these plans.

Provide direction and assistance to citizens, community groups and, community promotional organizations to implement community development goals.

Serve as a liaison with outside agencies and organizations encouraging economic development.

#### **V.**

**Public relations** duties of the City Administrator include the following:

As chief public relations ambassador, the City Administrator is responsible to develop cooperative relationships with citizens, the media, and local business and community groups.

Receive, investigate, and act upon citizen complaints.

**VI.**

**Qualification requirements** for the position of City Administrator include the following:

**Graduation from a four-year college/university with a bachelor's degree in public or business administration or related field is desired but not required. Commensurate education and experience will be taken into consideration.**

Ability to plan, organize, staff, direct, coordinate, and evaluate city programs.

Ability to communicate clearly and concisely.

Ability to perform related duties as assigned by the Mayor and City Council.

**§1-203     APPOINTED OFFICIALS; CITY CLERK.**

- (A) The City Clerk shall attend the meetings of the City Council and keep a correct journal of the proceedings of that body. He or she shall keep a record of all outstanding bonds against the city and when any bonds are sold, purchased, paid, or canceled, the record shall show the fact. He or she shall make, at the end of the fiscal year, a report of the business of the city transacted through his or her office for the year. That record shall describe particularly the bonds issued and sold during the year, and the terms of the sale with each, and every item, and expense thereof. He or she shall file all official bonds after the same shall have been properly executed, and approved. He or she shall make the proper certificate of passage which shall be attached to original copies of all bond ordinances hereafter enacted by the City Council.
  
- (B) The City Clerk shall issue and sign all licenses, permits, and occupation tax receipts authorized by law and required by the city ordinances. He or she shall collect all occupation taxes and license money except where some other city officer is specifically charged with that duty. He or she shall keep a register of all licenses granted in the city and the purpose for which they have been issued.
  
- (C) The City Clerk shall permit no records, public papers, or other documents of the city kept and preserved in his or her office to be taken therefrom, except by such officers of the city as may be entitled to the use of the same, but only upon their leaving a receipt therefor. He or she shall keep all records of his or her office, including a record of all licenses issued by him or her in a blank book with a proper index. He or she shall include as part of his or her records all petitions under which the City Council shall order public work to be done at the expense of the property fronting thereon, together with references to all resolutions, and ordinances relating to the same. He or she shall endorse the date, and hour of filing upon every paper, or document so filed in his or her office. All such filings made by him or her shall be properly docketed. Included in his or her records shall be all standard codes, amendments thereto, and other documents incorporated by reference, and arranged in triplicate in a manner convenient for reference. He or she shall keep an accurate and complete account of the appropriation of the several funds, draw, sign, and attest all warrants ordered for the payment of money on the particular fund from which the same is payable. At the end of each month, he or she shall then make a report of the amounts appropriated to the various funds and the amount of the warrants drawn thereon. Nothing herein shall be construed to prevent any citizen, official, or other person from examining any public records at all reasonable times.
  
- (D) (1) The City Clerk shall deliver all warrants, ordinances, and resolutions under his or her charge to the Mayor for his or her signature. He or she shall also deliver to officers, employees, and committees all resolutions and communications which are directed at said officers, employees, or committees. With the seal of the city, he or she shall duly attest the Mayor's signature to all ordinances, deeds, and papers required to be attested to when ordered to do so by City Council.

- (2) Within 30 days after any meeting of the City Council, the City Clerk shall prepare and publish the official proceedings of the City Council in a legal newspaper of general circulation in the city, and which was duly designated as such by the City Council. This publication shall set forth a statement of the proceedings thereof and shall also include the amount of each claim allowed, the purpose of the claim, and the name of the claimant, except that the aggregate amount of all payroll claims may be included as 1 item. Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to those job titles shall be published. Each charge for this publication shall not exceed the rates provided by the statutes of the state, Neb. RS 23-122. (*Neb. RS 19-1102*)
- (3) The above-mentioned publication shall be charged against the general fund.
- (4) The City Clerk shall then keep a book with a proper index, copies of all notices required to be published or posted by the City Clerk by order of the City Council, or under the ordinances of the city. To each of the file copies of these notices shall be attached the printer's affidavit of publication, if the notices are required to be published, or the City Clerk's certificate under seal where the same are required to be posted only. (*Neb. RS 19-1102*)
- (E) The City Clerk shall receive all objections to creation of paving districts, and other street improvements. He or she shall receive the claims of any person against the city, and in the event that the claim is disallowed in part, or in whole, the City Clerk shall notify such claimant, or his or her agent, or attorney, by letter within five (5) days after the disallowance, and the City Clerk shall then prepare transcripts on appeals of any disallowance of a claim in all proper cases.
- (F) The City Clerk may charge a reasonable fee for certified copies of any record in his or her office as set by resolution of the City Council. He or she shall destroy Municipal records under the direction of the State Records Board pursuant to Sections 84-1201 thru 84-1227; provided that the City Council shall not have the authority to destroy the minutes of the City Clerk, the permanent ordinances, and resolution books, or any other records classified as permanent by the State Records Board. (*Neb. RS 17-605*)

**§1-203.01 APPOINTED OFFICIALS; DEPUTY CITY CLERK.** The Deputy City Clerk shall assume the duties of the City Clerk in the City Clerk's absence.

**§1-204 CITY TREASURER.**

- (A) The City Treasurer shall be the custodian of all money belonging to the City. He or

she shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. He or she shall give every person paying money into the treasury a receipt therefor, specifying the date of payment and on what account paid. He or she shall also file copies of such receipts with his or her monthly reports, and he or she shall, at the end of every month, and as often as may be required, render an account to the City Council, under oath, showing the state of the treasury at the date of such account and the balance of money in the treasury. He or she shall also accompany such accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with any and all vouchers held by him or her shall be filed with his or her account in the City Clerk's office. If the treasurer fails to render his or her account within twenty days after the end of the month, or by a later date established by the governing body, the mayor in a city of the second class may use this failure as cause to remove the treasurer from office. The office shall be declared vacant, and the City Council shall fill the vacancy by appointment until the next election for municipal officers. (*Neb. RS 17-606*)

- (B) (1) All warrants upon the City Treasurer shall be paid in the order of their presentation therefor and as otherwise provided in Neb. RS 77-2201 through 77-2215. (*Neb. RS 77-2201*)
- (2) The City Treasurer shall keep a warrant register in the form required by Neb. RS 77-2202.
- (3) The City Treasurer shall make duplicate receipts for all sums which shall be paid into his or her office, which receipts shall show the source from which such funds are derived, and shall, by distinct lines and columns, show the amount received to the credit of each separate fund, and whether the same was paid in cash, in warrants, or otherwise. The Treasurer shall deliver one of the duplicates to the person making the payment and retain the other in his or her office. (*Neb. RS 77-2209*)
- (4) The City Treasurer shall daily, as money is received, foot the several columns of the cash book and of the register, and carry the amounts forward, and at the close of each year, in case the amount of money received by the Treasurer is insufficient to pay the warrants registered, he or she shall close the account for that year in the register and shall carry forward the excess. (*Neb. RS 77-2210*)
- (C) (1) The City Treasurer shall prepare and publish annually within 60 days following the close of the municipal fiscal year a statement of the receipts and expenditures by funds of the City for the preceding fiscal year. (*Neb. RS 19-1101*)
- (2) Publication shall be made in one legal newspaper of general circulation in the



City. If no legal newspaper is published in the City, then such publication shall be made in one legal newspaper published or of general circulation within the county in which the City is located. (*Neb. RS 19-1103*)

- (D) The City Treasurer shall keep all money belonging to the City separate and distinct from his or her own money. He or she shall invest and collect all money owned by or owed to the City as directed by the City Council. He or she shall maintain depository evidence that all municipal money is, in the name of the City, in a solvent and going financial institution of a type authorized by state law for deposit of municipal funds. He or she shall cancel all bonds, coupons, warrants, and other evidences of debt against the City, whenever paid by him or her, by writing or stamping on the face thereof, "Paid" by the City Treasurer, with the date of payment written or stamped thereon. He or she shall collect all special taxes, allocate special assessments to the several owners, and obtain from the County Treasurer a monthly report as to the collection of delinquent taxes.

**§1-205** **APPOINTED OFFICIALS; CITY ATTORNEY.** The City Attorney is the city's legal advisor, and as such he or she shall commence, prosecute, and defend all suits on behalf of the city. When requested by the City Council, he or she shall attend meetings of the City Council, and shall advise any city officials in all matters of law in which the interests of the city may be involved. He or she shall draft such ordinances, bonds, contracts, and other writings as may be required in the administration of the affairs of the city. He or she shall examine all bonds, contracts, and documents on which the City Council will be required to act, and attach thereto a brief statement in writing to all such instruments, and documents as to whether or not the document is in legal and proper form. He or she shall prepare complaints, attend, and prosecute violations of the city ordinances when directed to do so by the City Council. Without direction, he or she shall appear and prosecute all cases for violation of the city ordinances that have been appealed to and are pending in any higher court. He or she shall also examine, when requested to do so by the City Council, the ordinance records and advise and assist the City Clerk as much as may be necessary to the end that each procedural step will be taken in the passage of each ordinance to ensure that they will be valid, and subsisting local laws in so far as their passage and approval are concerned. The City Council shall have the right to compensate the City Attorney for legal services on such terms as the City Council and The City Attorney may agree, and to employ any additional legal assistance as may be necessary out of the funds of the city. (*Neb. RS 17-610*)

**§1-206** **APPOINTED OFFICIALS; CITY PHYSICIAN.** The City Physician shall be a member of the Board of Health of the city, and perform the duties devolving upon him or her as the medical advisor of the said board. In all injuries where a liability may be asserted against the city, the City Physician shall immediately investigate the said injuries, the extent thereof, and the circumstances. He or she shall then report the results of his investigation with the name of the party injured, and all other persons

who may have personal knowledge of the matter. He or she shall make all physical examinations and necessary laboratory tests incident thereto, and issue such health certificates as are required by ordinance. For the purpose of making examinations of the sanitary conditions of the property, and the state of health of the inhabitants therein, he or she shall have the right at all reasonable hours to go upon, and enter all premises, buildings, or other structures in the city. He or she shall perform such other duties as may be required of him by the laws of the State of Nebraska, and the ordinances of the city. When ordered to do so by the City Council he shall disinfect, or fumigate the premises, or persons in or about the premises, when the premises are quarantined, and to call upon indigent sick persons, and perform other professional services at the direction of the City Council. The City Physician shall receive as compensation for his services such sum as the Governing Body may from time to time set. He or she shall receive no compensation for his or her services as a member of the Municipal Board of Health. (*Neb. RS 17-121*)

**§1-207** **APPOINTED OFFICIALS; CITY POLICE CHIEF.** The City Police Chief shall direct the police work of the city and shall be responsible for the maintenance of law and order. He or she shall act as Health Inspector, Quarantine Officer and Secretary to the Board of Health. He or she is a working policeman and shall perform all the duties required of such 2policemen. He or she shall file the necessary complaints in cases arising out of violations of City Ordinances, and shall make all necessary reports required by the City Ordinances, or the laws of the State of Nebraska. (*Neb. RS 17-107, 17-121*)

**§1-208** **APPOINTED OFFICIALS; CITY POLICEMEN.** The City Police, whether regular, or special shall have the power to arrest all offenders against the laws of the State of Nebraska, or the city, by day or by night, and keep the said offenders in the city jail, or some other place to prevent their escape until trial can be held before the proper official of the State of Nebraska, or the city. They shall have full power, and authority to call on any person whenever necessary to assist them in performing public duties, and failure, neglect, or refusal to render such assistance shall be deemed a misdemeanor punishable upon conviction by a fine. Every city police officer shall be expected to be conversant and knowledgeable with the city and state laws and no law enforcement official shall have any interest in any establishment having a liquor license. City police officers shall have the duty to file such complaints and reports as may be required by the city ordinances, and the laws of the State of Nebraska. Any city police officer who shall willfully fail, neglect, or refuse to make an arrest, or who purposely and willfully fails to make a complaint after an arrest is made shall be deemed guilty of a misdemeanor, and upon conviction shall be fined. It shall be unlawful for the City Council to retain any City Policeman in that position after he or she shall have been duly convicted of the willful violation of any law of the country, the state, or any ordinance of the city, except minor traffic violations. It shall be the duty of every city police officer making a lawful arrest to search all persons in the presence of some other person, whenever possible, and shall carefully keep, and

produce to the proper judicial official upon the trial everything found upon the person of such prisoners. All personal effects so taken from prisoners mentioned above shall be restored to them upon their release. Suitable uniforms and badges shall be furnished to the city police by the city. Any member who shall lose or destroy the same shall be required to pay the replacement costs, and in the event that any member shall leave the force, he or she shall immediately deliver his badge to the Police Chief. The City Council may from time to time provide the city police with such uniforms, equipment, and transportation as may be essential in the performance of their official duties. (*Neb. RS 17-118, 17-124*)

**§1-209** **APPOINTED OFFICIALS; CITY FIRE CHIEF.** The City Fire Chief shall be elected by the members of the Fire Department. He or she shall enforce all laws and ordinances covering the prevention of fires; the storage and use of explosives and flammable substances; the installation of fire alarm systems; the maintenance of fire extinguishing equipment; the regulation of fire escapes; and the inspection of all premises requiring adequate fire escapes. He or she shall within two (2) days investigate the cause, origin, and circumstances of fires arising within his or her jurisdiction. He or she shall, on or before the first (1<sup>st</sup>) day in April and October of each year, cause the secretary to file with the City Clerk, and the Clerk of the District Court a certified copy of the rolls of all members in good standing in their respective companies in order to obtain the exemptions provided by law. He or she shall have the power during the time of a fire, and for a period of thirty-six (36) hours thereafter to arrest any suspected arsonist, or any person for hindering the department's efforts, conducting himself in a noisy and disorderly manner, or who shall refuse to obey any lawful order by the Fire Chief or Assistant Fire Chief. The Fire Chief or his assistant in charge of operations at a fire may command the services of any person present at any fire in extinguishing the same or in the removal, and protection of property. Failure to obey such an order shall be a misdemeanor punishable by a fine. The Fire Chief shall have the right to enter at all reasonable hours into buildings, and upon all premises within his jurisdiction for the purpose of examining the same for fire hazards, and related dangers. (*Neb. RS 17-147, 81-506*)

**§1-210** **APPOINTED OFFICIALS; CITY STREET SUPERINTENDENT.** The City Street Superintendent shall have general charge, direction, and control of all work on the streets, sidewalks, culverts, and bridges of the city, and shall perform such other duties as the council may require. It shall be his or her responsibility to see that gutters and drains therein function properly, and that the same are kept in good repair. He or she shall, at least once a year, make a detailed report to the City Council on the condition of the streets, sidewalks, culverts, alleys, and bridges of the city, and shall direct their attention to such improvements, repairs, extensions, and additions as he may believe are needed to maintain a satisfactory street system in the city along with an estimate of the cost thereof. He shall assume such other duties as the City Council may direct. (*Neb. RS 17-119*)

**§1-211**     **APPOINTED OFFICIALS; CITY ZONING ADMINISTRATOR.** The City Zoning Administrator shall perform all the duties specified in the Zoning and Sub-division regulations adopted by the Mayor and Council.

**§1-212**     **APPOINTED OFFICIALS; CITY PARK AND RECREATION SUPERINTENDENT.**  
The City Park and Recreation Superintendent shall be responsible for the management, care and use of the municipal auditorium, all City Park areas, the David City Aquatic Center, and other recreation areas under the oversight of the City of David City.

He or she shall carry out his duties within the policies and guidelines set forth by the City Council and shall inform the Council of problems with regard to the operations that the city should address. He or she shall see to the renting of the facilities and make weekly reports to the City Treasurer concerning the amounts due and the parties owing the City. All funds collected by him or her shall be turned over to the Treasurer on a weekly basis together with a complete accounting thereof.

**§1-213**     **APPOINTED OFFICIALS; ZONING ADMINISTRATOR**

**TITLE OF ZONING ADMINISTRATOR ESTABLISHED:** The title of Zoning Administrator of the City of David City, Nebraska, is hereby established. Such employee will be appointed by the Mayor with the approval of a majority of the City Council and may be removed at any time by the Mayor or a majority of the Council.

**ZONING ADMINISTRATOR; DUTIES AND RESPONSIBILITIES**

City Zoning Administrator and city planner. Top priority will be working on zoning permits followed by subdivision regulations and infrastructure demands. Responsible for updating the City's General Plan, working on subdivision regulations, and any other type of infrastructure demands deemed worthy of attention. If he/she has finished all the above mentioned duties for the given week or month, he/she may then work on updating the city's general plan.

Works closely with and reports to the City Council and the City Administrator.

Will work a maximum of 15 hours per week or 60 hours per month. Hours of work will be centered from the City Office building; he/she will also make themselves available to the public when in the office.

Required to attend all Planning Commission and Board of Zoning Adjustment Meetings. He/she will also be required to attend city council meetings as directed by the council.

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 9<sup>th</sup> day of March, 2011.

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Mayor Alan Zavodny

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Interim City Clerk Tami L. Comte

Council member Smith introduced Ordinance No. 1142. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Scribner seconded the motion. Voting AYE: Council members Scribner, Svoboda, Rogers, Smith, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried.

Council member Smith made a motion to pass and adopt Ordinance No. 1142 on the third and final reading. Council member Scribner seconded the motion. Voting AYE: Council members Svoboda, Scribner, Rogers, Smith, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried and Ordinance No. 1142 was passed and adopted as follows:

**ORDINANCE NO. 1142**

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 8: ELECTRICAL SYSTEM, §3-807 SCHEDULING DATES WHEN THE METERS SHALL BE READ TO REDUCE THE LAPSE BETWEEN THE READING DATE AND THE BILLING DUE DATE; 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 3: Departments. Article 8 of the David City Municipal Code Book be amended to read as follows:

**Chapter 3**

**Departments**

## Article 8. Electrical System

- §3-801 MUNICIPAL ELECTRICAL SYSTEM; OWNERSHIP.** The Municipality owns and operates the Municipal Electrical System through the Electric Supervisor. The Governing Body, for the purpose of defraying the cost of the care, management, and maintenance of the Municipal Electrical System may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the said tax shall be known as the Electrical Fund and shall remain in the custody of the Municipal Treasurer. The Electric Supervisor shall have the direct management and control of the Municipal Electrical System and shall faithfully carry out the duties of his office. He shall have the authority to adopt rules and regulations for the safe and efficient management of the Electrical System subject to the supervision and review of the Governing Body. The Governing Body shall by resolution set the rates to be charged for services rendered and shall file the same in the office of the Municipal Clerk for public inspection at any reasonable time. (*Ref. 17-902 thru 17-904, 17-906, 17-909 RS Neb.*)
- §3-802 MUNICIPAL ELECTRICAL SYSTEM; CONTRACTS AND TERMS.** The Municipality through its Electrical Department, shall furnish electric current for light and power purposes to persons whose premises abut on any supply wire of the distribution system and may furnish electric current to such other persons within or without its corporate limits, as and when, according to law, the Governing Body may see fit to do so. The rules, regulations, and rates for electric service, hereinafter named, in this Article, shall be considered a part of every application hereafter made for electric service and shall be considered a part of the contract between every consumer now served by the Electrical Department. Without further formality, the making of application of the part of any applicant or the use or consumption of electric energy by present customers and the furnishing of electric service to said applicant or customer shall constitute a contract between applicant or customer and the Municipality, to which both parties are bound. If a customer should violate any of the provisions of said contract or any reasonable rules and regulations that the Governing Body may hereafter adopt, the Electric Supervisor, or his agent, shall cut off or disconnect the electric service from the building or place of such violation and no further connection of electric service for such building or place shall again be made save or except by order of the Supervisor or his agent.
- §3-803 MUNICIPAL ELECTRICAL SYSTEM; CONSUMER'S APPLICATION.** Every person or persons desiring electrical service must make application therefore to the Electric Supervisor. Any applicant may be required to make a service deposit in such amount as has been set by the Governing Body and on file at the office of the Municipal Clerk. Electricity may not be supplied to any house or building except upon the written order of the Electric Supervisor. The System shall not supply to any person outside the corporate limits electrical service without special permission from the Governing Body;

Provided, that the entire cost of wire, installation, and other expenses shall be paid by the consumer. Nothing herein shall be construed to obligate the Municipality to supply electrical service to nonresidents. (Ref. 17-902, 19-2701 RS Neb.)

**§3-804 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 inside 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.

**§3-805 MUNICIPAL ELECTRICAL SYSTEM; ELECTRICAL SERVICE CONTRACTS.**

Contracts for electrical service are not transferable. Any person wishing to change from one location to another shall make a new application and sign a new contract. If any consumer shall sell, dispose, or remove from the premise where service is furnished in his name, or if the said premise is destroyed by fire or other casualty, he shall at one inform the Electric Supervisor who shall cause the electrical service to be shut off from the said premise. If the consumer should fail to give such notice, he shall be charged for all electricity used on the said premise until the Electric Supervisor is otherwise advised of such circumstances. (Ref. 17-902, 19-1404 RS Neb.)

**§3-806 MUNICIPAL ELECTRICAL SYSTEM; REGISTERED ELECTRICIAN.** Under no circumstances shall connections be made between the wires of the electrical distribution system of this Municipality and the meter of the consumer, except by an employee of the municipality or a registered and bonded electrician authorized to do so by the Electric Supervisor. The consumer may have wiring done by any competent registered and bonded electrician from the meter to the points of distribution. All

wiring, equipment, and apparatus shall be installed according to the electrical code duly adopted by the Municipality. All installation shall be done under the supervision and strictly in accordance with the rules, regulations, and specifications for such installation prescribed by the Electric Supervisor and Building Inspector; Provided, that such rules, regulations, and specifications have been reviewed and approved by the Governing Body. (Ref. 17-902 RS Neb.)

**§3-807 MUNICIPAL ELECTRICAL SYSTEM; METERS.** All electrical meters shall be read at least one (1) time each month during which electrical service is used.

With the installation of the new Energy Axis Management System, meters can now be read electronically and billed immediately. Therefore to reduce the lapse of time between the reading date and the billing due date the following schedule will be adopted:

The electric and water meters will be read on the following dates:

April 8 <sup>th</sup> , 2011:	Usage for March 1, 2011 to April 8, 2011
May 13, 2011:	Usage for April 9, 2011 to May 13, 2011
June 20, 2011:	Usage for May 14, 2011 to June 20, 2011

From June 20, 2011, and on, all meters will be read on the 20<sup>th</sup> of every month. Bills will be mailed around the twenty-fifth (25<sup>th</sup>) of the month and due between the first (1<sup>st</sup>) and the tenth (10<sup>th</sup>) of the following month.

In the event a meter is broken or otherwise fails to register accurately the use of electricity by any consumer, the six (6) month average of the season, one (1) year previous to such breakage, shall be used for billing purposes. (Ref. 19-1404 RS Neb.)

**§3-808 MUNICIPAL ELECTRICAL SYSTEM; FEES AND COLLECTIONS.** The Governing Body has the power and authority to fix the rates to be paid by electrical consumers for the use of electricity. All rates shall be on file for public inspection at the office of the Municipal Clerk. The City Office/David City Utilities office staff shall bill the consumers and collect all money received by the Municipality on the account of the Municipal Electrical System. (Ref. 17-902 RS Neb.)

**§3-809 MUNICIPAL ELECTRICAL SYSTEM; MINIMUM RATES.** All electrical consumers shall be liable for the minimum rate provided by ordinance unless and until the consumer shall, by written order, direct the Electric Supervisor to shut off the electricity in which case he shall not be liable thereafter for electrical service until the electricity is turned on again. (Ref. 17-902 RS Neb.)



**§3-810 MUNICIPAL ELECTRICAL SYSTEM; SERVICE DEPOSIT.** A service deposit for electrical service shall be required of all new subscribers for such service as a guarantee for payment. The amounts of such deposits, set by Resolution, and the administrative policies governing them shall be established by the City Administrator and approved by the City Council and shall be on file at the City Office. The funds from the investments shall be used for the repair and maintenance of the Electric System.

**§3-811 MUNICIPAL UTILITIES; DISCONTINUANCE OF SERVICE, NOTICE PROCEDURE.** The bill for electrical energy delivered to a subscriber shall be due and payable on the first (1<sup>st</sup>) business day of the month. If the bill is not paid before five (5:00) p.m. on the tenth (10<sup>th</sup>) day of the month, it shall be considered delinquent. When the tenth (10<sup>th</sup>) day of the month falls on Saturday or Sunday, bills become delinquent at five (5:00) p.m. on the following Monday. The Municipality shall have the right to terminate service of any non-domestic subscriber at any time after said subscriber shall have a delinquent bill. When a domestic subscriber has a bill that has become delinquent, the Municipality shall, before service is disconnected, give the subscriber written notice by First Class Mail that the bill is delinquent and that service may be disconnected if payment is not received by the specified date. The Municipality may also personally distribute the disconnect notice with an additional delivery fee being assessed as set by resolution. The Municipality shall not disconnect the service for at least seven (7) working days after issuance of such "DELINQUENT/DISCONNECT NOTICE". If notice is given by First Class Mail, such mail shall be conspicuously marked as to its importance. As to any subscriber who has previously been identified as a welfare recipient to the utility by the Department of Public Welfare, such notice shall be by certified mail and notice of such proposed termination shall be given to the Department of Public Welfare.

The notice shall contain the following information:

1. The reason for the proposed disconnection;
2. A statement of the intention to disconnect unless the domestic subscriber either pays the bill or reaches an agreement with the Department regarding payment of the bill;
3. The date upon which service will be disconnected if the domestic subscriber does not take appropriate action;
4. The name, address, and telephone number of the employee or department to whom the domestic subscriber may address an inquiry or complaint;
5. The domestic subscriber's right, prior to the disconnection date, to request a conference regarding any dispute over such proposed disconnection;
6. A statement that the Department may not disconnect service pending the conclusion of the conference;
7. A statement to the effect that disconnection may be postponed or prevented upon presentation of a duly licensed physician's certificate which shall certify that the domestic subscriber or resident within such subscriber's household has an existing illness or handicap which would cause such subscriber or resident to

- suffer an immediate and serious health hazard by the disconnection of the utility's service to that household. Such certificate shall be filed with the Department of Utilities within five (5) days of receiving notice under this Section and will prevent the disconnection of the Department's services for a period of thirty (30) days from such filing. Only one (1) postponement of disconnection shall be allowed under this subsection for each incidence of non-payment of any due account;
8. The cost that will be borne by the domestic subscriber for restoration of service;
  9. A statement that the domestic subscriber may arrange with the Department for an installment payment plan;
  10. A statement to the effect that those domestic subscribers who are welfare recipients may qualify for assistance in payment of their utility bill and that they should contact their caseworker in that regard; and
  11. Any additional information not inconsistent with this Section which has received prior approval from the Governing Body.

A domestic subscriber may dispute the proposed discontinuance of service by notifying the utility with a written statement that sets forth the reasons for the dispute and the relief requested. If a statement has been made by the subscriber, a conference shall be held before the utility may discontinue services.

This section shall not apply to any disconnections or interruptions of services made necessary by the utility for reasons of repair or maintenance or to protect the health or safety of the domestic subscriber or of the general public.

**§3-812** **MUNICIPAL UTILITIES; DISCONNECTS - RECONNECTS.** A fee will be charged for personally delivering a disconnect notice. If the bill remains unpaid the service will be disconnected. There will also be a fee charged for the disconnection. Following the disconnection of a subscriber and prior to the re-connection of the electric service, the customer shall pay the delivery fee, disconnect fee, re-connect fee, and utility bills. Such fees shall be set by resolution, and the administrative policies governing them shall be established by the City Council and shall be on file at the City Office. The funds from these fees shall be used for the repair and maintenance of the Electric System.

**§3-813** **MUNICIPAL ELECTRICAL SYSTEM; RESTRICTED USE.** The Municipal Electrical System does not guarantee the delivery of electric current over the lines of the distribution system except when it has sufficient power, current, equipment, and machinery to do so. The Electric Supervisor has the power and authority to disconnect or discontinue such service for any good and sufficient reason without liability. The Municipality shall use due care and reasonable diligence to provide and supply uninterrupted service to consumers, but shall not be liable for damages resulting from interruption of service due to causes over which the Municipality has no control and the Municipality expressly reserves the right to discontinue or disconnect any consumer's service without preliminary notice. (*Ref. 17-902 RS Neb.*)

- §3-814** **MUNICIPAL ELECTRICAL SYSTEM; BUILDING MOVING.** Should any house or building moving occur or be necessary and it becomes necessary in said work to remove or disturb any of the property or wires of the Municipal Electrical System, the same should not be done except upon written permission received from the Electric Supervisor, who shall then order paid in advance the actual cost of moving the said wires and such cost shall be paid by the applicant prior to the moving of the building or house. All expense of removing, changing, and replacing the said wires or apparatus of the Electric System shall be paid out of the deposit made prior to moving and any surplus remaining after all expenses are paid shall be returned to the applicant; Provided, that if in the course of moving the said building or house it becomes apparent that additional expense will be incurred, such additional deposit as deemed necessary may be demanded.
- §3-815** **MUNICIPAL ELECTRICAL SYSTEM; POSTING SIGNS.** It shall be unlawful for any person to post, tack, or fasten to the poles, structures, fixtures, or equipment of the Municipal Electrical System any sign, poster, advertisement, or banner without written permission from the Electric Supervisor. *(Ref. 19-1404 RS Neb.)*
- §3-816** **MUNICIPAL ELECTRICAL SYSTEM; COMPLAINTS.** Any consumer feeling himself aggrieved by reason of any controversy with the Electric Supervisor may appear before the Governing Body and present his grievance. Any consumer who considers himself aggrieved by being required to pay the charge demanded for the use of electricity, or for the resumption of electric service after the same shall have been shut off, shall pay such charge under protest, in which event the Municipal Clerk shall write on the receipt given such customer the words, "Paid Under Protest." Such consumer may then present his verified claim in the manner provided for presenting claims to the Governing Body for a refund of the amount so paid under protest. Such claims shall then be considered by the Governing Body in the same manner as other claims against the Municipality.
- §3-817** **MUNICIPAL ELECTRICAL SYSTEM; TRIMMING TREES.** Any person desiring to cut or remove trees or branches thereof in close proximity to the lines of the Municipal Electrical System shall, before doing the said work, give reasonable written notice to the Electric Supervisor and shall follow any and all rules and regulations which he may prescribe for doing such work. It shall be unlawful for any person felling or removing such trees or branches to disrupt or damage the lines without first giving proper notice and receiving permission in writing to do so. Whenever it becomes necessary to protect the lines or property of the Electrical System, the Governing Body shall have the power to order the cutting and removal of any overhanging branches, or limbs of trees so that the lines will be free and safe.
- §3-818** **MUNICIPAL ELECTRICAL SYSTEM; INSPECTIONS.** The Electric Supervisor or his duly authorized agents shall have free access at any reasonable time to each premise and building to or in which electricity is supplied; Provided, that in the event

of an emergency, such inspections may take place at any time. (*Ref. 17-902 RS Neb.*)

**§3-819 MUNICIPAL ELECTRICAL SYSTEM; DESTRUCTION OF PROPERTY.** It shall be unlawful for any person to willfully or carelessly break, injure, or deface any building, machinery, apparatus, fixture, attachment, or appurtenance of the Municipal Electrical System. (*Ref. 28-512 RS Neb.*)

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 9<sup>th</sup> day of March, 2011.

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Mayor Alan Zavodny

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Interim City Clerk Tami L. Comte

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Smith seconded the motion. Voting AYE: Council members Rogers, Scribner, Svoboda, Smith, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried and Mayor Zavodny declared the meeting adjourned at 8:42 p.m.

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Mayor Alan Zavodny

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Interim City Clerk Tami L. Comte



CERTIFICATION OF MINUTES  
March 9, 2011

I, Tami L. Comte duly qualified and acting Interim City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of March 9, 2011; 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.

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Tami L. Comte, Interim City Clerk