

## CITY COUNCIL PROCEEDINGS

May 12, 2004

The City Council of the City of David City, Nebraska met in open public session in the meeting room of the City Office, 557 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner-Press on May 6, 2004, 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 notices to the Public, Mayor and Council members conveyed the availability of the Agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Stephen Smith, Council members Gary L. Kroesing, Mark Kirby, Gary Smith, Ted Lukassen, Nick Hein, and Bill Schatz, City Administrator Jeff Fiegenschuh, City Attorney Jim Egr, Police Chief Stephen Sunday, Electric Supervisor Tim Kovar, Water/Sewer Supervisor Jim Kruse, Aquatic Center employees Rachelle Birkel, Mary Ann Mattingly, and Jill Stara, Mr. & Mrs. Mark Ingwersen, Mark Palik, Mrs. Dorothy Bohaty, Ed Sieck, Kory Kuhlman and Brian Behrns representing the David City Golf Club, John Miyoshi and Mike Sousek of Lower Platte North NRD, Banner-Press Editor Larry Peirce, and City Clerk-Treasurer Joan E. Kovar.

The meeting opened with the Pledge of Allegiance.

The minutes of the April 10<sup>th</sup>, 2004 meeting of the Mayor and City Council were approved upon a motion by Council member Kroesing and seconded by Council member Hein. Voting YEA: Council members Schatz, Kirby, Lukassen, Smith, Hein, and Kroesing. Voting NAY: None. The motion carried.

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

City Administrator Fiegenschuh reported that former Water/Sewer Supervisor Gene Divis filed for unemployment. Fiegenschuh called Gary Krumland of the League Office to see if they had any previous cases dealing with this issue. Krumland suggested contacting Jan Baker of the Department of Labor who suggested filing an appeal. Baker stated that just because Divis retired from the City doesn't mean he really "retired". Fiegenschuh filed an appeal with the tribunal.

Ed Sieck stated that the Boys Scouts need additional storage room and discussed a storage shed. Recently, however, they noticed there is all kinds of space in the attic for storage if they put in flooring and then permanent stairs or pull down stairs. The Council advised Sieck to utilize the attic space.

Dorothy Bohaty asked why the City can't have a bowling alley. Mayor Smith stated that the City does not want to run a bowling alley, but if she can find someone who would like to run one, the city has funds available for qualifying business loans.

Council member Kirby expressed concerns regarding Henningsen Foods trailers that are sticking out into west "C" Street. Police Chief Sunday stated the semi-trailers are backed up to the loading dock(s) along the north side, west end, of Henningsen Foods. When the trailers are parked at these docks, the front part of the trailers stick out into D Street which creates a traffic hazard. The Council advised Police Chief Sunday to address this problem.

Mark Palik reported tht the skate park committee's fund raising has been going good and they have raised approximately \$1,500-\$2,000. The committee members have been really busy so haven't had a lot of time to devote to fund raising activities. Palik estimates the skate park will cost \$30,000.00. The skate park committee would like the Council to verify where the skate park will be located. Mayor Smith asked if anyone from the committee had met with a spokesperson from the Congregational Church. Palik stated that Dave Streeter was going to, but wasn't sure if he had or not. Following discussion it was decided that City Administrator Fiegenschuh will arrange a meeting between the skate park committee and the Council committee consisting of Lukassen, Kroesing, and City Administrator Jeff Fiegenschuh.

Mayor Smith asked Mary Ann Mattingly and Jill Stara if they would like to address the Council. They declined saying they were only there for consideration of the pool rates. (Previously, they were upset because the City Office staff, Mayor Smith, and City Administrator Fiegenschuh informed them that their children could not work at the Aquatic Center because of Chapter VIII - Section 4 of the employee's manual which states: Employment of Relatives: Two or more of the same immediate family shall not be employed to supervise each other or do work under the same immediate supervisor. They may, however, be employed in different units of the same department or in different departments. The employment of family members under these circumstances is welcome. This does not apply to cases of the employment of relatives existing on the effective date of these rules.)

Mayor Smith asked for consideration of claims. Council member Kroesing made a motion to authorize the payment of claims. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

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

City Administrator Fiegenschuh reported that on the CDBG pre-application from the Department of Economic Development, David City came in 3<sup>rd</sup> out of 34 applicants in Nebraska. Fiegenschuh will have to submit a full application by June 10<sup>th</sup>.

Police Chief Sunday reported that he will be out of his office May 18<sup>th</sup> - 21<sup>st</sup> attending a training class.

Water/Sewer Supervisor Jim Kruse reported that they are in the process of changing over the lime silo at the water treatment plant, but hopefully will be on-line by Friday. In the meantime customers may notice harder water with discoloration.

City Attorney Egr reported that Randy Janak made a court appearance to discuss his property located at Lots One (1), Four (4), Five (5), Eight (8), Nine (9) and Twelve (12), all in Block Twenty-two (22), Original Town of David City, for possible violation of the Stipulation he signed because of various items he is storing on his property. Janak needs to have his property cleaned up by July 6<sup>th</sup> or the court will proceed with further action.

City Clerk Kovar reported that Tami Comte and Barb Hiatt will be attending a utility billing training class in Lincoln on May 25, 2004.

Council member Hein commended Street Superintendent Jim McDonald on the cleanliness of the swimming pool. Council member Schatz commended Street Superintendent Jim McDonald for replacing the street brick in front of the fire station, and Bob Wright for his detailed Zoning Administrator's report.

Mayor Smith stated that the Planning Commission met on May 10<sup>th</sup> and will meet on Monday, May 17<sup>th</sup> to consider proposed changes to the definitions listed in the General Plan. Mayor Smith suggested scheduling a special council meeting to enable the City Council to hold a public hearing to consider the proposed definition changes. Council member Hein made a motion to schedule a special Council Meeting on Tuesday, June 1, at 6:00 p.m. to hold a public hearing and consider proposed definition changes in the General Plan. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. A Committee of the Whole meeting will immediately follow the special council meeting.

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

City Attorney Egr expressed some concerns regarding the Interlocal Agreement to sell water to the Lower Platte North Natural Resource District. Egr stated with so many amendments he worries that the original agreement will be lost. Egr prefers addendums to the original agreement. Therefore, Council member Kroesing made a motion to table consideration of adopting a revised interlocal agreement to sell water to the Lower Platte North NRD until the June 9<sup>th</sup> council meeting to allow City Attorney Jim Egr time to review and possibly revise this. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Kirby made a motion to support the David City Street Department's efforts to start a motor oil recycling program in David City. Council member Lukassen seconded the motion. Voting YEA: Council members Smith, Schatz, Kroesing, Hein, Lukassen, and Kirby. Voting NAY: None. The motion carried.

Council member Kirby introduced Ordinance No. 971. Council member Kroesing made a motion to pass Ordinance No. 971 on the first reading only. Council member Hein seconded the motion. Voting YEA: Council members Schatz, Smith, Lukassen, Hein, Kroesing, and Kirby. Voting NAY: None. The motion carried and Ordinance No. 971 was passed on first reading as follows:

**ORDINANCE NO. 971**

**AN ORDINANCE RELATING TO MUNICIPAL PROPERTY; PROVIDING FOR STREET CONSTRUCTION ASSESSMENTS, CURB AND GUTTER; REPEALING CONFLICTING ORDINANCES AND SECTIONS; 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. That Chapter 8 - Public Ways and Property, Article 3 - Streets, Section 8-316 of the Municipal Code of David City, Nebraska, is adopted to read as follows:

§8-316 STREETS; CONSTRUCTION ASSESSMENT; ALL NEW SUBDIVISIONS & HOUSING DEVELOPMENTS LOCATED WITHIN THE CITY'S CORPORATE LIMITS AND WITHIN THE CITY'S ZONING JURISDICTION.

(A) To defray the costs and expenses of street improvements, as may be authorized

by law, the Governing Body shall have the power and authority to require that all developers petitioning the municipality for street construction shall pay the following expenses:

1. Street Construction: The developer(s) is responsible for eighty percent (80%) of all costs associated with the development of new streets within, leading to, or connecting the subdivision(s).
  2. Curb and Gutter: The developer(s) is responsible for eighty percent (80%) of all costs associated with the installation of new curb; curb and gutter.
  3. Intersections: The developer(s) is responsible for eighty percent (80%) of all costs associated with installation of intersections within the subdivision or housing development.
  4. Engineering Fees: The developer(s) is responsible for eighty percent (80%) of all costs associated with the services provided by the selected engineer.
- (B) Before final plat approval is granted by the Governing Body, the developer(s) shall have completed and paid, their full share of the project costs.
- (C) The arrangement, character, extent, width, grade, and location of all streets within all subdivisions and housing developments shall conform to the standards of the Comprehensive Plan of current adoption and Zoning Ordinances of the City. All required improvements and installations shall be constructed or installed to conform to the provisions of this Ordinance and the standard specifications of the City.
- (D) 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 selected by the municipality through a competitive bidding process.

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, approval, as required by law.

Passed and approved this \_\_\_\_ day of \_\_\_\_\_, 2004.

(Seal)

Passed on 1<sup>st</sup> reading only 5/12/04  
City Clerk Joan E. Kovar

Passed on 1<sup>st</sup> reading only 5/12/04  
Mayor Stephen Smith

The proposed resolution setting the admission fees for the swimming pool were discussed. Council member Kirby stated that he was against charging people outside of Butler County a higher fee. Council members Schatz, Smith, and Kroesing vocally agreed. Council member Smith stated that when he went to the Columbus Aquatic Center they didn't charge him anymore than anyone else. People coming from outside Butler County will already have the expense of higher gasoline prices for their vehicle to get here. The Council decided to charge the same

admission rates regardless of where they live.

Council member Kirby introduced Resolution No. 15 - 2004 and moved for its passage and adoption. Council member Smith seconded the motion. Voting YEA: Council members Hein, Lukassen, Schatz, Kroesing, Smith, and Kirby. Voting NAY: None. The motion carried and Resolution No. 15 - 2004 was passed and adopted as follows:

**RESOLUTION NO. 15 - 2004**

WHEREAS, Chapter 3, Article 6, Section 3-602 of the Municipal Code of the City of David City, Nebraska, allows a reasonable admission charge for the use by any person of the Municipal Swimming Pool.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the following admission fees are hereby established as follows:

<u>Daily Admissions:</u>		<u>Season Pass:</u>	
Adult (18 & up)	\$4.00	Family	\$130.00
Child (6-17)	\$2.00	Couple	\$90.00
Toddler (5 & under)	Free*	Individual	\$70.00

\* Free with paying adult.

-----

Swimming Lessons	\$ 20/wk
Candy	65¢
Private pool parties:	\$ 85/hr without slide \$135/hr with slide

Passed and approved this 12<sup>th</sup> day of May, 2004.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Brian Behrns, who was the previous grounds keeper for the golf course, stated that he appreciated the City Council gathering all of the information concerning using affluent for irrigation at the golf course. There are a lot of unanswered questions at this time, and Brian hopes that the Council will proceed with the source water protection grant. "We can't find answers to questions unless we know if we can get the grant money, and I don't want us to be dead in the water right now. I would like to find out if this is the best answer". Brian said.

A letter from Katherine Kerner, Nebraska Department of Economic Quality, Program Specialist, reported:

It is my understanding there is a need for clarification regarding the required setbacks associated with the land application of treated wastewater. The draft National Pollutant Discharge Elimination System (NPDES) permit contains requirements pertaining to the land application of treated wastewater to land application sites with unrestricted public access (e.g. golf courses) and sites with restricted public access (e.g. rural cropland). Setback requirements are partially based on the probability of public exposure to the land applied wastewater. Treated wastewater applied to restricted public access sites does not require disinfection as there is little likelihood for direct human exposure. Set backs are used to further insure there is little risk of exposure either via direct contact or indirectly as in the case of drinking water wells. Outfall 002 in the draft NPDES permit specifically addresses the setbacks associated with the land application of treated wastewater to restricted public access sites such as cropland. Please refer to the following excerpt from the draft NPDES permit;

Additional Requirements Pertaining to Outfall 002 - Land Application of Treated Wastewater to Sites with Restricted Public Access

1. There shall be no public drinking water wells within 500 feet of the application area.
2. There shall be no private drinking water wells within 100 feet of the application area.
3. Effluent shall not be applied to sites less than 100 feet from any inhabited dwellings.
4. There shall be restricted public access to all land application sites. Land application sites shall not be located within or adjacent to residential areas.
5. Land application sites shall be free of perennial or intermittent streams, ponds, lakes or wetlands.

RE: Setback Clarification, Requirements for Land Application of Treated Wastewater - Proposed David City Golf Course Project

The requirements and conditions applicable to Outfall 003 in the draft NPDES permit do not include setbacks as the treated wastewater must receive disinfection. Land application sites that have unrestricted public access are considered to have a greater probability of public exposure to the land applied treated wastewater and therefore must receive disinfection prior to its use for land application. Outfall 003 in the draft NPDES permit specifically addresses the conditions and requirements associated with the land application of treated wastewater to unrestricted public access sites. Please refer to the following excerpt from the draft NPDES permit;

Additional Requirements Pertaining to Outfall 003 - Land Application of Treated Wastewater to Sites with Unrestricted Public Access

1. The monitoring frequency shall be, at a minimum, once during the first week of the initial land application (irrigation) event of each irrigation season and once every month thereafter for all parameters except flow.
2. Runoff into any water body is prohibited.
3. The treated effluent shall be disinfected prior to land application in an unrestricted public access area (i.e. the David City Golf Course). If chlorine or a chlorine compound is used as the disinfection agent the treated effluent must be dechlorinated prior to land application.
4. Public access to the land application site shall be prohibited during the actual land application event.
5. The permittee shall provide signage located at the land application site(s) containing language prohibiting public access during a land application event and informing the public that reclaimed water is used on the site(s).

The effluent cannot run off into the lakes so a buffer of some sort would be needed. Kerner addressed concerns regarding smell which she stated was not an issue.

There were concerns regarding the impact on the soil. There is the potential that continued use during drought conditions could cause a turf problem. Blending may be needed; which is not a blending of water, but using city water during drought times to flush the build-up on the soil.

Council member Kroesing stated that he didn't really care what other towns in various states are doing; he wants to know what is best for David City.

Council member Kirby stated that Joe Roberts, 478 S 10<sup>th</sup>, whose residence is just across the street north of hole #2, had several concerns when he attended the golf club meeting. "I take that to heart. I am for water conservation, but am not sure now is the time. The right tests need to be done and then thoroughly discussed; let's do real, solid tests."

Council member Schatz made a motion to proceed with the source water protection grant process. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mayor Smith declared a ten minute recess at 8:45 p.m. The meeting resumed at 8:55 p.m.

City Attorney Egr reported that Dick Grubaugh, who is the personal representative for Bill Hlavac, would like to get rid of the property at 320 No. 10<sup>th</sup> Street. Egr asked if the city would be willing to waive the interest on the lien filed against the property.

*(On January 10, 2001, Resolution No. 3-2001 was passed, assessing \$5,893.33 against the Bill Hlavac property for the cost of clean-up. Hlavac paid \$300 on 2/21/01 and \$2,717.16 on 3/01 leaving a balance of \$2,876.17; plus interest at the rate of 14% per annum from March 1, 2001.)*

Council member Hein stated that he heard from a reliable source that the house is in no condition to live in. Council member Smith said we had a similar instance before and the trailer was cleaned up, sold, and is still there. The Council stated that there should be a stipulation that the house must be removed. The council questioned if the house could be burned down or if it is too close to other residences. The Council asked Egr to approach Mr. Grubaugh to see if he would be willing to consent to burning the house down, or agreeing to the stipulation that the house must be removed.

Council member Kirby made a motion to table consideration of the Bill Hlavac property at 320 10<sup>th</sup> Street until the June 9, 2004, council meeting. This will allow Attorney Jim Egr time to visit with Dick Grubaugh concerning this property. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

The Board of Health met on May 6, 2004, and reviewed an inspection report, and photographs regarding the Barb Vogl property at 1070 N. 8<sup>th</sup> Street. The Board of Health declared the property to be in violation of city code 4-401 Nuisances. Council member Kroesing made a motion to accept the findings of the Board of Health concerning the Barb Vogl property at 1070 No. 8<sup>th</sup> Street. Council member Kirby seconded the motion. All of the council members were present, all voted YEA, and the motion carried.

Council member Hein made a motion to start the notification procedures concerning the Barb Vogl property at 1070 N. 8<sup>th</sup> Street. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

City Clerk Kovar reported that she visited with Dan Sypal of Stop-Inn, 1510 4<sup>th</sup> Street, to verify that he had no objections with the request for a fireworks stand to be located on his property. Sypal stated he was aware of the request and had no objections. Therefore, Council member Hein made a motion to approve the application of Richard Ludvik, d.b.a. Ka-Boomers Enterprises Inc., for a fireworks permit at 1510 4<sup>th</sup> Street. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Kirby made a motion to pass Ordinance No. 970 on the third and final reading. Council member Kroesing seconded the motion. Voting YEA: Council members Hein, Schatz, Smith, Lukassen, Kroesing, and Kirby,. Voting NAY: None. The motion carried and Ordinance No. 970 was passed on third and final reading as follows:

**ORDINANCE NO.**

**970**

**AN ORDINANCE AMENDING CHAPTER 4: HEALTH AND SANITATION OF THE**

**DAVID CITY MUNICIPAL CODE BOOK; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.**

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

Section 1. Chapter 4: Health and Sanitation of the David City Municipal Code Book be amended to read as follows:

**Chapter 4  
HEALTH AND SANITATION  
Article 1. General Provisions**

- §4-101** **HEALTH; REGULATIONS.** For purpose of promoting the health and safety of the residents of the Municipality, the Board of Health shall, from time to time, adopt such rules and regulations relative thereto and shall make such inspections, prescribe such penalties, and make such reports as may be necessary toward that purpose. *(Ref. 17-121 RS Neb.)*
- §4-102** **HEALTH; ENFORCEMENT OFFICIAL.** The Municipal Police Chief, as the Quarantine Officer, shall be the chief health officer of the Municipality. It shall be his duty to notify the Governing Body and the Board of Health of health nuisances and of every case of contagious, infectious, or malignant disease.
- §4-103** **HEALTH; STATE RULES.** The "Rules and Regulations Relating to Public Health," Department of Health of the State of Nebraska are hereby incorporated by reference when the same are applicable to the Municipality, in their present form and as they may hereafter be amended. Three (3) copies of the said pamphlet are filed at the office of the Municipal Clerk and shall be available for public inspection at any reasonable time. *(Ref. 18-132 RS Neb.)*

**Article 2. Contagious Disease**

- §4-201** **DISEASE; SPREADING CONTAGION.** It shall be unlawful for any person to spread disease willfully or negligently, or to cause the spread of the same.
- §4-202** **DISEASE; MEDICAL ATTENTION REQUIRED.** It shall be unlawful for the parent, guardian, or other person responsible for any child to fail or neglect to secure proper medical treatment for the said child when he/she is afflicted with a contagious or infectious disease.

**Article 3. Garbage Disposal**

- §4-301** **GARBAGE; DEFINED.** The term "garbage" as used herein shall be defined to mean kitchen refuse, decayed waste, dead animals, or anything that may decompose and become offensive to the public health.
- §4-302** **RUBBISH; DEFINED.** The terms "rubbish" or "trash" as used herein shall be defined as discarded machinery, chips, pieces of wood, sticks, dead trees, branches, bottles, broken glass, crockery, tin cans, boxes, papers, rags, or any other litter or debris that is not an immediate hazard to the health of the residents of the Municipality.

**§4-303** **WASTE; DEFINED.** The term "waste" as herein defined shall mean cinders, ashes, plaster, brick, stone, sawdust, or sand.

**§4-304** **GARBAGE, TRASH, AND WASTE.** It shall be unlawful for any person to keep in, on, or about any dwelling, building, or premise, or any other place in the Municipality, decayed vegetable or animal substance, garbage, or refuse matter of any kind that may be injurious to the public health or offensive to the resident of the Municipality unless the same is kept in receptacles not exceeding a thirty (30) gallon capacity and as nearly air-tight as may be practical. It shall be unlawful to throw or sweep into the streets, alleys, parks, or other public grounds any dirt, paper, nails, pieces of glass, refuse, waste, or rubbish of any kind. No person may permit garbage, rubbish, waste, or refuse to collect and all persons shall remove the same from their property within twenty-four (24) hours after being notified to do so by the Municipal Police Chief who shall represent the Board of Health. Any person having garbage, rubbish, waste, or refuse that is subject to decay or fermentation within a short period of time shall be required to place the same in a standard garbage can with a tight cover, or a durable plastic container that is securely tied at its opening.

#### **Article 4. Nuisances**

**§4-401** **NUISANCE; SPECIFICALLY DEFINED.** The maintaining, using, placing, depositing, leaving, or permitting of any of the following specific acts, omissions, places, conditions, and things are hereby declared to be nuisances:

1. Any odorous, putrid, unsound or unwholesome grain, meat, hides, skins, feathers, vegetable matter, or the whole or any part of any dead animal, fish, or fowl.
2. Privies, vaults, cesspools, dumps, pits or like places which are not securely protected from flies or rats, or which are foul or malodorous.
3. Filthy, littered or trash-covered cellars, house yards, barnyards, stable-yards, factory-yards, mill yards, vacant areas in rear of stores, granaries, vacant lots, houses, buildings, or premises.
4. Animal manure in any quantity which is not securely protected from flies and the elements, or which is kept or handled in violation of any ordinance of the municipality.
5. Liquid household waste, human excreta, garbage, butcher's trimmings and offal, parts of fish or any waste vegetable or animal matter in any quantity; Provided, nothing herein contained shall prevent the temporary retention of waste in receptacles in a manner provided by the health officer of the Municipality, nor the dumping of non-putrefying waste in a place and manner approved by the health officer.
6. Tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire metal articles, bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster, and all trash or abandoned material, unless the same be kept in covered bins or galvanized iron receptacles.
7. Trash, litter, rags, accumulations of barrels, boxes, crates, packing crates, mattresses, bedding, excelsior, packing hay, straw or other packing material, lumber not neatly piled, scrap iron, tin or other metal not neatly piled, old automobiles or parts thereof, or any other waste materials when any of said articles or materials create a condition in which flies or rats may breed or multiply, or which may be a fire danger or which are so unsightly as to depreciate property

- values in the vicinity thereof.
8. Any unsightly building, billboard, or other structure, or any old, abandoned or partially destroyed building or structure or any building or structure commenced and left unfinished, which said buildings, billboards or other structures are either a fire hazard, a menace to the public health or safety, or are so unsightly as to depreciate the value of property in the vicinity thereof.
  9. All places used or maintained as junk yards, or dumping grounds, or for the wrecking and disassembling of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn-out, wrecked or abandoned automobiles, trucks, tractors, or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which said places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others, or which are so unsightly as to tend to depreciate property values in the vicinity thereof.
  10. Stagnant water permitted or maintained on any lot or piece of ground.
  11. All articles, including tires, that may retain water and aide in mosquito breeding, which could prove to be a hazard for the West Nile Virus.
  12. Stock yards, granaries, mills, pig pens, cattle pens, chicken pens or any other place, building or enclosure, in which animals or fowls of any kind are confined or on which are stored tankage or any other animal or vegetable matter, or on which any animal or vegetable matter including grain is being processed, when said places in which said animals are confined, or said premises on which said vegetable or animal matter is located, are maintained and kept in such a manner that foul and noxious odors are permitted to emanate therefrom, to the annoyance of inhabitants of the Municipality, or are maintained and kept in such a manner as to be injurious to the public health.
  13. All other things specifically designated as nuisances elsewhere in this Code.  
(*Ref. 17-207, 18-1720 RS Neb.*)

**§4-402** **NUISANCES; ABATEMENT PROCEDURE.** It shall be the duty of every owner, occupant, lessee, or mortgage of real estate in the Municipality to keep such real estate free of public nuisances. Upon determination by the Board of Health that said owner, occupant, lessee, or mortgagee has failed to keep such real estate free of public nuisances, the Governing Body shall thereupon cause notice to be served upon the owner occupant, lessee, mortgagee or agent thereof, by publication and by certified mail. Such notice shall describe the condition as found by the Board of Health and state that said condition has been declared a public nuisance, and that the condition must be remedied at once. If the person receiving the notice has not complied therewith or taken an appeal from the determination of the Board of Health within five (5) days after receipt of certified mail or within five (5) days after date of publication whichever is later, the Board of Health shall notify the Governing Body of such noncompliance and the Governing Body shall, upon receipt of such notice, cause a hearing date to be fixed and notice thereof to be served upon the owner, occupant, lessee, or mortgagee, or agent of the real estate. Such notice of hearing shall be by personal service or certified mail and require such party or parties to appear before the Governing Body to show cause why such condition should not be found to be a public nuisance and remedied. A return of service shall be required by the Governing Body. Such notice shall be given not less than five (5) days prior to the time of hearing, provided that whenever the owner, lessee, occupant, or mortgagee of such real estate is a non-resident or cannot be found in the State, then the Municipal Clerk shall publish, in a newspaper of general circulation in the Municipality, such notice of hearing for two

(2) consecutive weeks, the last publication to be at least one (1) week prior to the date set for the hearing. Upon the date fixed for the hearing and pursuant to notice, the Governing Body shall hear all objections made by interested parties and shall hear evidence submitted by the Board of Health. If after consideration of all of the evidence, the Governing Body shall find that the said condition is a public nuisance, it shall, by resolution, order and direct the owner, occupant, lessee, or mortgagee to remedy the said public nuisance at once; Provided, the party or parties may appeal such decision to the appropriate court for adjudication, during which proceedings the decision of the Governing Body shall be stayed. Should the owner or occupant refuse or neglect to promptly comply with the order of the Governing Body, the Governing Body shall proceed to cause the abatement of the described public nuisance. Upon completion of the work by the Municipality, a statement of the cost of such work shall be transmitted to the Governing Body, which is authorized to bill the property owner or occupant, or to levy the cost as a special assessment against the land. Such special assessment shall be a lien on the real estate and shall be collected in the manner provided for special assessments. (Ref. 17-123.01, 17-207, 18-1720 RS Neb.) (Ord. No. 523, 4/28/76)

**§4-403** **NUISANCES; JURISDICTION.** The Mayor and Chief of Police of the Municipality are directed to enforce this Municipal Code against all nuisances. The jurisdiction of the Mayor, Chief of Police, and court shall extend to, and the territorial application of this Chapter shall include, all territory adjacent to the limits of the Municipality within two (2) miles thereof and all territory within the corporate limits. (Ref. 18-1720 RS Neb.)

#### **Article 5. Garbage and Refuse Collection**

**§4-501** **GARBAGE AND REFUSE COLLECTION; AUTHORITY.** The governing body for the city may provide for the collection and removal of garbage or refuse found upon any lot or land within its corporate roads, or alleys abutting such lot or land which constitutes a public nuisance. The city may require the owner, duly authorized agent, or tenant of such lot or land to remove the garbage or refuse from such lot or land and streets, roads, or alleys. (Ref. 16-230, 16-231, 16-246, 16-901, 18-1303 R.S. Neb.)

**§4-502** **GARBAGE AND REFUSE COLLECTION; NOTICE; REMOVAL.** Notice that removal of garbage or refuse is necessary shall be given to each owner or owner's duly authorized agent and to the tenant if any. Such notice shall be provided by personal service or by certified mail. After providing such notice, the city through its proper offices shall, in addition to other proper remedies, remove the garbage or refuse, or cause it to be removed, from such lot or land and streets, roads, or alleys. (Ref. 16-230, 16-231, 16-246, 16-901, 18-1303 R.S. Neb.)

**§4-503** **GARBAGE AND REFUSE COLLECTION; NUISANCE.** If the Mayor declares that the accumulation of such garbage or refuse upon any lot or land constitutes an immediate nuisance and hazard to public health and safety, the city shall remove the garbage or refuse, or cause it to be removed, from such lot or land within forty-eight hours after notice by personal service or following receipt of a certified letter in accordance with section 4-502 if such garbage or refuse has not been removed. (Ref 16-230, 16-231, 16-246, 16-901, 18-1303 R.S. Neb.)

**§4-504** **GARBAGE AND REFUSE COLLECTION; LIEN.** Whenever a city removes any garbage or refuse, or causes it to be removed, from any lot or land pursuant to this article, it shall, after a hearing conducted by the governing board, assess the cost of the

removal against such lot or land. (Ref 16-230, 16-231, 16-246, 16-901, 18-1303 R.S. Neb.)

#### **Article 6. Garbage Collectors**

**§4-601** **GARBAGE COLLECTORS; LICENSE.** It shall be unlawful for any persons, corporations or other legal entities to collect, haul or convey wastes, refuse, garbage, rubbish, junk, hazardous waste, or solid waste (as those terms are defined under the laws of the State of Nebraska) for hire within the incorporated area of the City without first having procured a license to do so.

Application for a license to collect, haul or convey wastes, refuse, garbage, rubbish, junk, hazardous waste or solid waste for hire shall be made to the City Clerk upon blanks furnished by the City Clerk. Said application blanks shall set forth the name and residence of the applicant, the business address of the applicant, the ownership of the vehicle or vehicles to be used, the number and kinds of vehicles to be used, with a definite description of each such vehicle and such other information as may be required to satisfactorily identify the applicant and vehicles. The applicant shall pay to the City Clerk the required licensed fee as hereinafter provided. Such applicant shall comply with all ordinances or regulations of the City and State of Nebraska respecting the collecting, hauling or conveying of wastes, refuse, garbage, rubbish, junk, hazardous waste or solid waste.

It shall be unlawful for any persons, corporations, or other legal entities licensed under this section, or any other persons, to haul or convey any solid waste generated within the corporate limits of the City to any facility or system (as those terms are defined under State law) with which the City, either alone or in combination with other cities, villages or counties, has not contracted for the safe and sanitary disposal of solid waste generated within the City's jurisdiction area.

All persons, corporations, or other legal entities licensed under this section may provide, in addition to services regarding the collection, hauling, and conveying of solid waste, assistance in providing services for curb side pick-up of recyclable materials, yard waste, and discarded appliances.

All persons, corporations, or legal entities licensed under this section shall cooperate with their customers within the City in finding outside sources for the collection, hauling, conveying and disposal of hazardous waste generated within the corporate limits of the City.

**§4-602** **GARBAGE COLLECTORS; LICENSE FEE.** An annual license fee of \$50.00 shall be charged for each licensed hauler within the City. All license fees shall be due and payable on October 1<sup>st</sup> of each year and shall expire on September 30<sup>th</sup> of each year.

#### **Article 7. Penal Provisions**

**§4-701** **VIOLATION; PENALTY.** Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

**§4-702 ABATEMENT OF NUISANCE.** Whenever a nuisance exists as defined in this Chapter, the Municipality may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law.

Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as a part of the judgement in the case. (*Ref. 18-1720, 18-1722 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 12<sup>th</sup> day of May, 2004.

(Seal)

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Kirby introduced Resolution No. 16 - 2004 and moved for its passage and adoption. Council member Smith seconded the motion. Voting YEA: Council members Hein, Lukassen, Schatz, Kroesing, Smith, and Kirby. Voting NAY: None. The motion carried and Resolution No. 16 - 2004 was passed and adopted as follows:

**RESOLUTION NO. 16 - 2004**

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 The City of David City is requesting \$350,000 of CDBG Public Works Grant Funds, of which \$332,500 will be used for street improvements to 16 city blocks in a target area in the southwest portion of David City, and \$17,500 will be used for general administration of the grant. The City will provide \$289,700 in matching funds utilizing city funds and revenue bonds. The total project costs are estimated to be \$639,700. There will be no special assessments to homeowners in the target area

to recover capital costs. There will be no persons displaced as a result of CDBG activities.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the Mayor be authorized and directed to proceed with the formulation of any and all contracts, documents or other memoranda between the City of David City, Nebraska and the Nebraska Department of Economic Development so as to effect acceptance of the grant application.

Passed and approved this 12<sup>th</sup> day of May, 2004.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Lukassen made a motion to authorize Mayor Smith to execute a Residential Antidisplacement and Relocation Assistance Plan. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

### **RESIDENTIAL ANTIDISPLACEMENT AND RELOCATION ASSISTANCE PLAN**

The City of David City, Nebraska will replace all occupied and vacant occupiable low/moderate-income dwelling units demolished or converted to a use other than as low/moderate-income housing as a direct result of activities assisted with Community Development Block Grant (CDBG) funds provided under the Housing and Community Development Act of 1974, as amended.

All replacement housing will be provided within three years of the commencement of the demolition or rehabilitation relating to conversion. Before obligating or expending funds that will directly result in such demolition or conversion, the City of David City, Nebraska, will make public and submit to DED the following information in writing:

1. A description of the proposed assisted activity;
2. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as low/moderate-income dwelling units as a direct result of the assisted activity;

3. A time schedule for the commencement and completion of the demolition or conversion;
4. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;
5. The source of funding and a time schedule for the provision of replacement dwelling units; and
6. The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy.

The City of David City, Nebraska will provide relocation assistance, according to either the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (49 CFR Part 24) or 24 CFR 570.496a(c) to each low/moderate-income family displaced by the demolition of housing or by the conversion of a low/moderate-income dwelling to another use as a direct result of assisted activities.

Consistent with the goals and objectives of activities assisted under the CDBG program, the City of David City, Nebraska will take the following steps to minimize the displacement of persons from their

1. Maintain current data on the occupancy of houses in areas targeted for CDBG assistance.
2. Review all activities prior to implementation to determine the effect, if any, on occupied residential properties.
3. Include consideration of alternate solutions when it appears an assisted project will cause displacement, if implemented.
4. Require private individuals and businesses to consider other alternatives to displacement causing activities, if they are requesting CDBG assistance.

Signed:

Title: Mayor

Date: May 12, 2004

Subscribed in my presence and sworn to before me.

Notary Public

Council member Hein made a motion to go into executive session to discuss personnel matters. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. The Council, Mayor Smith, City Attorney Jim Egr, and City Administrator Jeff Fiegenschuh went into executive session at 9:15 p.m..

Council member Kroesing made a motion to come out of executive session. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. The Mayor and Council came out of executive session at 10:02 p.m..

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Hein seconded the motion. Voting YEA: Council members Lukassen, Kirby, Schatz, Smith, Hein, and Kroesing. The motion carried and Mayor Smith declared the meeting adjourned at 10:06 p.m..

Mayor Stephen Smith

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES  
May 12<sup>th</sup>, 2004

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of May 12<sup>th</sup>, 2004; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Joan E. Kovar