

CITY COUNCIL PROCEEDINGS

July 11, 2007

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 July 5th, 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 Dana Trowbridge, Council members Gary Smith, Bill Scribner, Ted Lukassen, and Bill Schatz, City Administrator Joe Johnson, City Attorney Jim Egr, and City Clerk-Treasurer Joan Kovar. Council members Nick Hein and Rick Holland were absent.

Also present were: Police Chief Stephen Sunday, Marge Grubaugh, Darlene McClure, Roy & Geraldine DeVall, George Mastera, Thomas Margrave, Louis Woita, Joe and Dorothy Bohaty, Robert Masek, Kathy Truksa, Jim Brown, and Banner Press Editor Larry Peirce.

The meeting opened with the Pledge of Allegiance.

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

The minutes of the June 13th, 2007 meeting of the Mayor and City Council were reviewed. Council member Schatz noted a correction on page 1. When the minutes of the May 9th, 2007 minutes were approved, the minutes affirmed that Schatz voted AYE but then incorrectly stated that Schatz was absent. Scribner was absent. Therefore Council member Lukassen made a motion to approve the minutes with the correction noted and Council member Schatz seconded. Voting AYE: Council members Smith, Scribner, Schatz, and Lukassen. Voting NAY: None. Council members Hein and Holland were absent. The motion carried.

Mayor Trowbridge asked for Petitions, Communications, and Citizens' Concerns in addition to those contained in the Agenda packets. There were none.

Mayor Trowbridge asked for consideration of claims. Council member Smith made a motion to authorize the payment of claims. Council member Lukassen seconded the motion. Voting AYE: Council members Scribner, Schatz, Lukassen, and Smith. Voting NAY: None. Council members Hein and Holland were absent. The motion carried.

Mayor Trowbridge scheduled a Committee of the Whole meeting for Monday, July 30th, at 6:00 p.m. in the City Office meeting room.

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

There were no additional reports. The Street report stated that Castle Construction of Columbus has given a price of \$12.50 per square yard for cement work for the 1 year plan. Mayor Trowbridge suggested re-bidding this.

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

Jim Brown, Butler County Ethanol, LLC, was present to report on the progress of the Ethanol Plant in Butler County. Brown stated that they are finalizing the financing. The construction will take approximately 16 months from start to finish depending on weather conditions. They tentatively hope to be operational by the 1st quarter of 2009. The estimated economic effects, for the Butler County Ethanol, LLC Production Facility, is available on the City's web-site (davidcityne.com). The annual wages will be in the high 30's. The plant will be located approximately one (1) mile north of David City on the NW quarter section, 37th & M Rd.

Council member Schatz made a motion to advance to agenda item #10 - Consideration of dedicating the newly constructed handicapped fishing pier on the west park lake in the name of Richard (R.J.) Sabata. Council member Lukassen seconded the motion. Voting AYE: Council members Scribner, Smith, Lukassen, and Schatz. Voting NAY: None. Council members Hein and Holland were absent. The motion carried.

Council member Smith made a motion to dedicate the newly constructed handicapped fishing pier on the west park lake in memory of Richard (R.J.) Sabata. Council member Scribner seconded the motion. Voting AYE: Council members Lukassen, Schatz, Scribner, and Smith. Voting NAY: None. Council members Hein and Holland were absent. The motion carried.

City Administrator Joe Johnson stated that the fishing pier dedication will be held on Tuesday, July 17th, at 8:30 a.m.. The following proclamation will be presented to the family of Richard Sabata:

Proclamation

**IN MEMORY OF RICHARD "R.J." SABATA,
AND IN RECOGNITION OF HIS DEDICATION AND SELFLESS EFFORTS
FOR THE COMMUNITY, ENVIRONMENT, AND RECREATION.**

WHEREAS, Richard Sabata has passed away in 2005 after a long battle with cancer; and,

WHEREAS, Richard Sabata was an active member of the David City Community; and,

WHEREAS, Richard Sabata inspired groups and individuals to work together to solve community issues; and,

WHEREAS, Richard Sabata was an inspirational driving force through his work with the Lower Platte North Natural Resource District in the development and completion of a David City Municipal Park Lakes Project; and,

WHEREAS, the City wishes to recognize Richard Sabata's dedication and selfless efforts for the

community, environment and recreation; and,

WHEREAS, as a memorial to Richard Sabata, the City will place a recognition plaque at the site of the handicapped fishing pier in acknowledgment of his valuable contributions; and,

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Council of the City of David City do hereby express their condolences to the family of Richard Sabata; and,

BE IT FURTHER RESOLVED that the Mayor and City Council, on behalf of the City, dedicate the newly constructed handicapped fishing pier in the name of Richard Sabata by naming the pier the "**Richard "R.J." Sabata Memorial Fishing Pier**".

Council member Schatz made a motion to advance to agenda item #11 - Consideration of approving the appointment of members to the Airport Advisory Committee. Council member Lukassen seconded the motion. Voting AYE: Council members Scribner, Smith, Lukassen, and Schatz. Voting NAY: None. Council members Hein and Holland were absent. The motion carried.

Council member Schatz made a motion to approve the appointment of Bob Litjen, Lonnie Davis, Street Superintendent Jim McDonald, Council member Ted Lukassen, and City Administrator Joe Johnson as the members of the Airport Advisory Committee. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Lukassen, Smith, and Schatz. Voting NAY: None. Council members Hein and Holland were absent. The motion carried.

Council member Schatz made a motion to advance to agenda item #12 - Consideration of creating a new zoning district to the south of the current downtown commercial district and along Highway 15 that would allow for residential properties to be transitioned into commercial properties. Council member Lukassen seconded the motion. Voting AYE: Council members Scribner, Smith, Lukassen, and Schatz. Voting NAY: None. Council members Hein and Holland were absent. The motion carried.

The council discussed creating a new zoning district to the south of the current downtown commercial district and along Highway 15 that would allow for residential properties to be transitioned into commercial properties. It was noted that the Planning Commission should have discussed this prior to the Council taking action on this. Council member Lukassen stated that he didn't see a need for this. The other council members agreed stating that there are specific exceptions for which a conditional use/special exception can be requested. The Council decided not to create a new zoning district.

Police Chief Sunday notified Barb Vogl, by letter dated June 26, 2007, that her property located at 1070 N 8th Street is in violation of the City's littering ordinance adopted on June 13, 2007. She was given five (5) days to clear her property of items determined to be litter. The count of five (5) days was based upon the date of publication in the Banner Press. On June 29, 2007, Randy Janak filed an appeal and asked for a review and hearing. City Administrator Johnson notified Barb Vogl by a letter dated July 2, 2007, that stated: "*owner*" is defined in the City's littering ordinance as "*any person in possession and also any person having or claiming to have any legal or*

equitable interest in said premises.” The intent of the property owner is unclear because the letter of appeal was signed by Randy Janak. This situation could be construed to assume that the property owner is NOT appealing the notice of violation of the City’s littering ordinance but a non-legal or non-equitable inhabitant is appealing the notice of violation of the City’s littering ordinance. A formal hearing has been scheduled for July 11, 2007 at 7:30 p.m. at City Hall, located at 557 4th Street in David City, Nebraska. The City Council shall hear the testimony of all competent persons desiring to testify respecting the condition constituting the nuisance, including the estimated cost of abatement and other matters which may be pertinent. The property “owner” is encouraged to attend this scheduled hearing to voice the intent of the appeal.

At 7:33 p.m., neither Barb Vogl nor Randy Janak were present. Police Chief Sunday stated that Barb Vogl has made a very diligent effort clearing the property of litter. City Administrator Joe Johnson and Police Chief Sunday will inspect the Barb Vogl property located at 1070 N. 8th Street, tomorrow July 12, 2007, at 8:00 a.m.

Council member Schatz stated that he was uncomfortable passing Ordinance No. 1048 on the third and final reading without having all of the Council members present. Therefore, Council member Schatz made a motion to table consideration of Ordinance No. 1048 entitled: AN ORDINANCE AMENDING CHAPTER 7; “FIRE REGULATIONS” OF THE DAVID CITY MUNICIPAL CODE BOOK; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM, until the August 8, 2007, council meeting. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Lukassen, Smith, and Schatz. Voting NAY: None. Council members Hein and Holland were absent. The motion carried.

ORDINANCE NO. 1048

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

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

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

**Chapter 7
FIRE REGULATIONS**

Article 1. Fire Prevention

§7-101 **FIRE PREVENTION; ADOPTION OF UNIFORM FIRE CODE.** There is hereby adopted by the City of David City, Nebraska, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion that certain Code and Standards known as the Uniform Fire Code Standards which Code makes reference to the National Fire Code, published by Western Fire Chiefs’ Association and the International Conference of Building Officials, being the current editions thereof and the whole thereof, except such portions as are hereinafter deleted, modified or amended by this Chapter, of said Code and Standards.
One (1) copy is on file with the City Clerk of the City of David City, Nebraska. These Codes are hereby adopted and incorporated as fully as if set out at length, herein, and from the date on which this Chapter shall take effect, the provisions of these Codes shall be controlling within the limits of the City of David City, Nebraska. (Ref. 18-132, 19-902, 19-92.)

§7-102 **FIRE PREVENTION; DEFINITIONS.**

a. The word “jurisdiction” used in the Uniform Fire Code, means the zoning jurisdiction of the City of David City.

b. The term “Municipal official” means all elected and appointed officials of the City of David City.

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

a. Inspection under the Uniform Fire Code shall be accomplished principally by the Zoning Administrator, the Fire Chief, Police Chief, and the Police Officers.

- b. For special or unusual situations the Zoning Administrator or the Fire Chief may recommend to the City of David City the employment of special technical inspectors to improve the enforcement of these codes.

- §7-104** **FIRE PREVENTION; FIRE LIMITS DEFINED.** The following described territory in the Municipality shall be and constitute the fire limits: The corporate limits of the City of David City, Nebraska as they exist from time to time
- §7-104.01** **FIRE PREVENTION; STORAGE OF FLAMMABLE OR COMBUSTIBLE LIQUIDS PROHIBITED.** The storage of flammable or combustible liquids in outside aboveground tanks of any size is prohibited within the Residential, Public, Semi-Public and Park areas. (Ref. 17-137 RS Neb.)
- §7-104.02** **FIRE PREVENTION; STORAGE OF LIQUEFIED PETROLEUM RESTRICTED.** In the zones where storage of liquefied petroleum is permitted, the provision of the Uniform Fire Code shall govern. Liquefied petroleum may be stored in areas that are zoned Industrial and Downtown Commercial. (Ref 17-137 RS Neb.)
- §7-104.03** **FIRE PREVENTION; STORAGE OF EXPLOSIVES AND BLASTING AGENTS PROHIBITED.** No areas are zoned to permit the storage of explosives and blasting agents except as regulated in Section 77.106(b) of the Uniform Fire Code. (Ref. 17-137 RS Neb.)
- §7-105** **FIRE PREVENTION; PERMIT FOR HAZARDOUS MATERIALS.** Hazardous materials may be stored within the Commercial and Industrial zones referred to in Section 7-104 provided that all such materials are identified as to kind, amount, location and other data concerning said materials in "Application to Store Hazardous Material" and annually on August 1, or on the date when such materials are initially placed in the City, to the Fire Chief and the Zoning Administrator, which application must be made by the person in control of such materials. "Application to Store Hazardous Materials" shall be made in duplicate to the Fire Chief and Zoning Administrator on forms supplied by the City and kept on file in the Fire Department. (Ref. 17-137 RS Neb.)
- §7-106** **FIRE PREVENTION; BURNING REGULATIONS WITHIN FIRE LIMITS.** Burning is prohibited within the prescribed fire limits. Boilers and wood burning stoves may be used as outside commercial incinerators only if they substantially meet the requirements hereinafter set forth specifically including the requirements of spark arresters and foundations. Incinerators to be used inside buildings shall conform to the standards as specified in the Codes adopted in Section 7-101.
- Outside commercial incinerators for use in the fire limits shall, as a minimum, be constructed of steel plate not less than three-sixteenths (3/16) inches in thickness. The base or burning area of the incinerator may not exceed sixteen (16) square feet in area. All joints and seams of the incinerator must be welded together, except for access doors. There will be no more than two (2) access doors for each incinerator. The base walls or burning area of the incinerator must have at least six (6), but not more than ten (10) ventilation holes in each wall of the incinerator base. The holes shall not be greater than one (1") inch in diameter. The base or burning area of the incinerator must be covered with a chimney with an opening not to exceed one (1) square foot in diameter. Chimneys shall be connected to the incinerator base or burning area as noted above. The terminating point of the chimney shall extend above the incinerator base or burning area the same distance as the height of the incinerator base or burning area. The chimney must terminate in a steel, or substantially constructed, spark arrester having mesh openings of not more than one half (1/2") inch in diameter or one-quarter (1/4") inch mesh. Spark arresters must cover the entire chimney opening. Incinerators may have a hole, not to exceed nine (9) square inches, in the bottom of the incinerator base.
- Outside commercial incinerators must meet the location standards of Section 7-107.02. Inside incinerators shall be approved by an independent testing or rating agency and must conform to the Codes adopted in Section 7-101. All incinerators must meet the standards of the Department of Environmental Quality. (Ref. 17-549, 17-556.)
- §7-107** **FIRE PREVENTION; BURNING AND FIRES PROHIBITED; EXCEPTION AND REGULATIONS.** All open burning and open fires in the City are prohibited.

Article 2. Fires

- §7-201** **FIRES; AUTHORITY OF FIRE CHIEF.** When there is a fire, the Fire Chief or the designated Firemen in charge, shall have the authority to do all things that are, in his judgment, necessary to protect life and property in the area adjacent to the fire. (Ref. 17-147 RS Neb.)
- §7-201** **FIRES; ASSISTANCE.** It shall be unlawful for any person to refuse, after receiving a command of the Fire Chief or Assistant Fire Chief, to aid in extinguishing a fire or to assist in the removal and protection of property. (Ref. 28-908 RS Neb.)
- §7-203** **FIRES; SPECTATORS.**
(1) A person commits the offense of interfering with a fireman if at any time and place where any fireman is discharging or attempting to discharge any official duties, he willfully:

- (a) Resists or interferes with the lawful efforts of any fireman in the discharge or attempt to discharge an official duty; or
 - (b) Disobeys the lawful orders given by any fireman while performing his duties; or
 - (c) Engages in any disorderly conduct which delays or prevents a fire from being extinguished within a reasonable time; or
 - (d) Forbids or prevents others from assisting or extinguishing a fire or exhorts another person, as to whom he has no legal right or obligation to protect or control, not to assist in extinguishing a fire.
- (2) As used in this section, fireman shall mean any person who is an officer, employee, or member of a fire department or fire-protection or firefighting agency of the Federal Government, the State of Nebraska, the City of David City, County of Butler County, rural fire district, or other public or municipal corporation or political subdivision of the state, whether such person is a volunteer, partly paid, or fully paid, while he is actually engaged in firefighting, fire supervision, fire suppression, fire prevention, or fire investigation.
- (3) Interference with a fireman on official duty is a Class I misdemeanor. (Ref. 28-908 RS Neb.)

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

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

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

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

1. First removing such tin and/or metal ceiling covering before installation of the drop ceiling; or
2. Installing a fire sprinkler system. All sprinkler systems installed, from this date, shall comply with the State Fire Marshal codes.
 - a. Having a static flow test to determine the water pressure;
 - b. Determining the minimum number of heads required, with each head covering the square footage specified in the 1990 Factory Mutual System pocket guide to automatic sprinklers;
 - c. Installing a back-flow device;
 - d. Placing the sprinkler heads below the suspended ceiling;
 - e. Sprinkler heads shall also be installed in basements when the building is being remodeled by at least fifty percent (50%) of its assessed value;
 - f. Having a pre-approved plan.

Article 3. Penal Provision

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

Section 2. 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 ____ day of _____, 2007.

Passed on 2nd reading only 6/13/07
TABLED 7/11/07 to August 8, 2007
City Clerk Joan E. Kovar

Passed on 2nd reading only 6/13/07;
TABLED 7/11/07 to August 8, 2007
Mayor Dana Trowbridge

Council member Schatz made a motion to authorize Johnson Erickson O'Brien (JEO) to update the existing future land use map, to be consistent with the proposed zoning map, for a cost of \$800.00. Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Scribner, Smith, and Schatz. Voting NAY: None. Council members Hein and Holland were absent. The motion carried.

Council member Schatz made a motion to authorize the city clerk or deputy clerk, without designating names, to have the authority to sign documents at the Farm Service Agency. Council member Lukassen seconded the motion. Voting AYE: Council members Smith, Scribner, Lukassen, and Schatz. Voting NAY: None. Council members Hein and Holland were absent. The motion carried.

Council member Schatz made a motion to table consideration of approving "The Eating Establishment" (a.k.a. Runza) Tax Increment Financing (TIF) Project. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Lukassen, Smith, and Schatz. Voting NAY: None. Council members Hein and Holland were absent. The motion carried.

There was no need to consider recessing the meeting to the July 30th Committee of the Whole Meeting regarding the approval of "The Eating Establishment" TIF Project, so no action was taken.

There being no further business to come before the Council, Council member Lukassen made a motion to adjourn. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Schatz, Smith, and Lukassen. Voting NAY: None. Council members Hein and Holland were absent. The motion carried and Mayor Trowbridge declared the meeting adjourned at 7:55 p.m.

Mayor Dana Trowbridge

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES

July 11, 2007

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 July 11, 2007; 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, City Clerk