

## CITY COUNCIL PROCEEDINGS

July 13, 2005

The City Council of the City of David City, Nebraska met in an 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 7, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor and Council members conveyed the availability of the Agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Stephen Smith, Council members Gary Smith, Gary Kroesing, Ted Lukassen, Mark Kirby, Nick Hein, and Bill Schatz, Youth Council member Nolan Moravec, City Administrator Jeff Fiegenschuh, City Attorney Jim Egr, Police Chief Stephen Sunday, Electric Supervisor Tim Kovar, Mrs. Donna Allen, Dr. Randy Schawang, Larry McPhillips, Bob Kobza, Banner Press Editor Larry Peirce, and City Clerk-Treasurer Joan E. Kovar. Youth council member Audra Duren was absent.

The meeting opened with the Pledge of Allegiance.

The minutes of the June 8, 2005 meeting of the Mayor and City Council were approved upon a motion by Council member Lukassen and seconded by Council member Hein. Voting AYE: Council members Kirby, Schatz, Smith, Kroesing, Hein, and Lukassen. 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. A letter was received from Chamber President Mike Moravec requesting \$2500 of Keno Funds for a Chamber of Commerce sign and/or fireworks. The Council had discussed designating the 2005-2006 Keno funds for computers at the Library. Council member Kirby stated he is a big supporter of the July Jam and fireworks display and feels that this request warrants consideration.

Mayor Smith advised that the City had a claim to Harvey Oaks Animal Hospital in the amount of \$829.37 regarding the dog shooting incident.

Council member Kroesing made a motion to include the Harvey Oaks Animal Hospital invoice with the claims. Council member Schatz seconded the motion. Discussion followed. Council member Smith stated that he didn't feel that the City owed the bill as the police department didn't do anything wrong. The dog was loose and heading towards a young girl; the police officer acted accordingly in the best way possible in the amount of time he had to react. Council member Hein stated that he agreed with Council member Smith 100%. Council member Schatz agreed that the police officer didn't do anything wrong, however, when the police took the dog to the Animal Hospital as a public service, good will gesture, the City incurred a responsibility when we transported the dog. Schatz stated that the City has a responsibility to pay the Animal Hospital, but then perhaps the City should bill the dog owner for reimbursement. Voting YEA: Council members Lukassen, Schatz, and Kroesing. Voting NAY: Council members Smith, Hein, and Kirby. Mayor Smith broke the tie and voted YEA. The motion carried. Mayor Smith stated that he felt 1) this has already received enough air play; 2) he stands by Police Sergeant Sylvester that he did the right thing at the right time and Police Chief Sunday who did the

humane thing, and 3) he realizes there are strong feelings on both sides but there are more important issues to talk about.

Mayor Smith asked for consideration of claims. Council member Schatz made a motion to authorize the payment of claims. Council member Kroesing seconded the motion. Voting YEA: Council members Lukassen, Kroesing, and Schatz. Voting NAY: Council members Smith, Hein, and Kirby. Mayor Smith broke the tie and voted YEA. 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 the following:

- The high service pump failed at the water treatment plant. This is the pump that pumps water into the water tower. The pumps themselves are fine but the fuses in the V.F.D. controls were blown. The direct drive pump was started to fill the tower. This leaves us with 1 pump to fill the tower and run the system. Two new V.F.D. controls were ordered.
- LB217 allows us to issue bonds without going before a vote of the people. The only way we can do this though is by issuing bonds with another political subdivision. Jeff will speak with the David City High School board to consider a joint project for the auditorium renovation. A \$47,000 matching grant has been received from the State of Nebraska Department of Tourism's Local Civic, Cultural and Convention Center Financing Fund. If the DCHS board agrees the City could pay 75% of the match so the City could finance \$38,000 and the school district \$12,000.

Council member Kirby reported that there is an abundance of muskrats in the City lakes. The City needs to check with the Nebraska Game and Parks Commission to see how we can handle this nuisance and reduce the number of muskrats. Police Chief Sunday said that he will contact the Nebraska Game and Parks Commission and see how we can handle this problem.

Council member Hein questioned if all the aerators are working in the park lakes. This question will be forwarded to Park Supervisor Bill Buntgen.

Mayor Smith scheduled a Committee of the Whole meeting for Monday, July 25, 2005 at 6:00 p.m. in the City Office meeting room.

Council member Kroesing made a motion to accept the Committee and Officers' Reports as presented. Council member Smith seconded the motion. All of the Council members were present, all voted AYE, and the motion carried.

Council member Schatz made a motion to add the following as agenda item #18: Consideration of waiving the lien on the Pat Prothman property located at 320 No. 10<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 advance to agenda item #18 - Consideration of waiving the lien on the Pat Prothman property located at 320 No. 10<sup>th</sup> Street. Council member Kroesing seconded the motion. All of the Council members were present, all voted AYE, and the motion carried.

The property at 320 No. 10<sup>th</sup> Street was discussed. Pat Prothman stated that he is remodeling the house and it will be livable. Council member Schatz stated that the house may be habitable but questioned if it meets minimal standards concerning wiring and plumbing. Police Chief Sunday reported that he inspected the property and determined that the garage roof had been repaired, there is electricity available within the house, there is running water available in the kitchen and bathroom, the sanitary sewer facilities are in working order, and the yard area has been policed regarding trash and litter. Sunday stated that Pat was working on the remodeling at the time of the inspection so it was not fair to make an assessment at this time. The property will need to be reviewed by the Board of Health at their August 3<sup>rd</sup> meeting and then the Board of Health will make a recommendation to the City Council.

It was also noted that the original motion from the December 8, 2004 council meeting was as follows: *"to leave the existing lien on the property located at 320 N. 10<sup>th</sup> Street in David City, Nebraska, but if the property passes a Board of Health inspection by August 15, 2005, then the council will waive the interest on the lien."* Nothing was ever said about waiving the lien.

Council member Kroesing made a motion to table consideration of the Pat Prothman property located at 320 No. 10<sup>th</sup> Street to the August 10<sup>th</sup> Council meeting. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Schatz introduced Ordinance No. 1005. Council member Schatz made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Lukassen seconded the motion. Voting YEA: Council members Hein, Kirby, Smith, Kroesing, Lukassen, and Schatz. Voting NAY: None. The motion carried.

Council member Schatz made a motion to pass and adopt Ordinance No. 1005 on the third and final reading. Council member Hein seconded the motion. Voting YEA: Council members Lukassen, Kirby, Kroesing, Smith, Hein, and Schatz. Voting NAY: None. The motion carried and Ordinance No. 1005 was passed and adopted as follows:

**ORDINANCE NO. 1005**

AN ORDINANCE CONFIRMING THE SALE OF THE EAST EIGHTY FEET (E 80') OF LOT FIVE (5), IN BLOCK THREE (3), MILES SECOND (2<sup>ND</sup>) ADDITION TO DAVID CITY, BUTLER COUNTY, NEBRASKA; STATING THE NAME OF THE PURCHASER AND THE TERMS OF THE SALE; TO REPEAL ALL ORDINANCES IN CONFLICT THEREWITH AND ORDERING THE ORDINANCE TO BE PUBLISHED ACCORDING TO LAW.

BE IT ORDAINED BY THE CITY OF DAVID CITY, NEBRASKA:

SECTION 1: The purchaser of the following described real estate, to-wit:

East Eighty Feet (E 80') of Lot Five (5), in Block Three (3),  
Miles Second (2<sup>nd</sup>) Addition to David City, Butler County, Nebraska

is KEVIN D. STARA AND ELIZABETH STARA, husband and wife  
as joint tenants and not as tenants in common.

SECTION 2: The terms of the sale are as follows:

- (A) Purchase price of FOUR THOUSAND THREE HUNDRED TEN DOLLARS (\$4,310.00).
- (B) 10% of the said purchase price was received on the date of the sale.
- (C) Balance of the said purchase price is due upon passage of this Ordinance Confirming Sale.
- (D) Title Insurance will be paid one-half (½) by the City and one-half (½) by the said purchaser. Any loan policy Title Insurance required by the said purchaser will be paid totally by the said purchaser.
- (E) City will pay the documentary stamps.
- (F) 2004 real estate taxes and prior years, if any, will be paid by the City and the 2005 real estate taxes will be prorated to the date of the passage of this Ordinance.
- (G) The said purchaser IS responsible for the removal of all asbestos and MUST remove all asbestos within ninety (90) days of passage, and REMOVE the entire house within ninety (90) days of passage of this Ordinance.
- (H) The said purchaser MUST meet the Board of Health of the City of David City, Nebraska, inspection requirements within ninety (90) days of passing of this Ordinance.

SECTION 3: The above referenced sale is HEREBY CONFIRMED by the City of David City, Nebraska.

SECTION 4: The Mayor of the City of David City, Nebraska is hereby authorized to execute the necessary deed to the said purchaser upon payment of the said purchase price and deliver the same upon satisfaction of all requirements of Section 2 stated aforesaid.

SECTION 5: All Ordinances in conflict with this Ordinance are hereby repealed.

SECTION 6: This Ordinance shall become effective upon passage, approval, and publication as provided by law.

PASSED AND APPROVED ON July 13, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Schatz made a motion to authorize Mayor Smith and City Clerk Kovar to execute the deed for the East Eighty Feet (E 80') of Lot Five (5), in Block Three (3), Miles Second (2<sup>nd</sup>) Addition to David City, Butler County, Nebraska. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

**CORPORATION WARRANTY DEED**

**THE CITY OF DAVID CITY, NEBRASKA**, a Nebraska Municipal Corporation, Grantor,

a corporation organized and existing under and by virtue of the laws of the State of Nebraska in consideration of One Dollar and other Valuable consideration (\$1.00 & OVC), receipt of which is hereby acknowledged, conveys to:

**KEVIN D. STARA AND ELIZABETH STARA**, husband and wife as joint tenants and not as tenants in common, Grantee

the following described real estate (as defined in Neb. Rev. Stat. § 76-201) in Butler County, Nebraska:

East Eighty Feet (E 80') of Lot Five (5), in Block Three (3),  
Miles Second (2<sup>nd</sup>) Addition to David City, Butler County, Nebraska

Grantor covenants with the Grantee that Grantor:

- (1) is lawfully seised of such real estate and that it is free from encumbrances
- (2) has legal power and lawful authority to convey the same;
- (3) warrants and will defend the title to the real estate against the lawful claims of all persons.

Executed: July 13, 2005

THE CITY OF DAVID CITY, NEBRASKA

By: \_\_\_\_\_  
Stephen Smith, Mayor

By: Joan E. Kovar, City Clerk

(Corporation Seal)

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF BUTLER     )

The foregoing instrument was acknowledged before me \_\_\_\_\_, 2005 by STEPHEN SMITH, Mayor and JOAN E. KOVAR, City Clerk, of the City of David City, Nebraska, a Nebraska Municipal Corporation, on behalf of the corporation.

Notary Public

Mayor Smith declared a ten minute recess at 8:20 p.m.. The meeting resumed at 8:30 p.m..

Council member Schatz made a motion to table indefinitely, subject to recall, consideration of an easement for a drainage ditch in Holoubek's Dove West Addition. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Larry McPhillips reported that Gina Barlean is the new Economic Development Director and the Butler County Development Alliance has been revamped with her leadership. They are requesting that the City allocate \$5,000 to the Butler County Development Alliance for economic and community development services. The Council referred the request to the Budget committee. City Administrator Fiegenschuh stated that if the request is approved the funds would come out of the electric, water, and sewer departments.

Council member Smith made a motion to approve Jeffrey S. Gregg as Manager of the Pizza Hut, 1931 4<sup>th</sup> Street in conjunction with their Class A Liquor License. Council member Hein seconded the motion. Voting YEA: Council members Kroesing, Schatz, Lukassen, Kirby, Hein, and Smith. Voting NAY: None. The motion carried.

Bob Kobza stated that he knows of a gentleman who may be interested in buying the old theater lot located on the west side of 4<sup>th</sup> Street between "D" and "E" Streets. Council member Kroesing made a motion to pass and adopt Resolution No. 9 - 2005. Council member Smith seconded the motion. Voting AYE: Council members Kirby, Lukassen, Hein, Schatz, Smith, and Kroesing. Voting NAY: None. The motion carried and Resolution No. 9 - 2005 was passed and adopted as follows:

**RESOLUTION NO. 9 - 2005**

WHEREAS, Nebraska State Statute 17-503 allows any city of the second class to convey any real and personal property owned by it providing the passage of a resolution directing the sale at public auction or by sealed bid of such real and personal property and the manner and terms thereof; and,

WHEREAS, the City of David City, Nebraska, is the owner of the property located at Lot Nine (9), except for the south 4.7 feet (4.7') of Lot Nine (9), all of Lot Ten (10), and Lot Eleven (11) except for the north 5.8 feet (5.8') of Lot Eleven (11), all in Block Twenty-Four, Original Town of David City, and,

WHEREAS, the City of David City, Nebraska, desires to sell said property by sealed bids, which date is to be determined, with a minimum starting bid of \$10,000 or the valuation, whichever is greater, 15% down on the date of sale, balance due upon confirmation. The City of David City reserves the right to reject any and all bids.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the City of David City will sell by sealed bids the north 20.3' of Lot Nine (9), all of Lot Ten (10), and the south 19.2' of Lot Eleven (11), all in Block Twenty-Four (24), Original Town of David City.

BE IT FURTHER RESOLVED that the sale of real property and the terms thereof shall be published once each week for three consecutive weeks in a legal newspaper published in or of general circulation in David City, and after the passing of the thirty-day right-of-remonstrance period, the property shall then be sold. .

Dated this 13<sup>th</sup> day of July, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Schatz made a motion to refer consideration of lighting the outside of the new water tower to the water tower committee. Council member Smith seconded the motion. The committee consists of Council members Hein, Lukassen, Schatz, and Mark Carlson. Voting YEA: Council members Hein, Kirby, Lukassen, Kroesing, Smith, and Schatz. The motion carried.

Council member Kirby introduced Ordinance No. 1006. Council member Smith made a motion to pass Ordinance No. 1006 amending Chapter 9: Building Regulations of the David City Municipal Code Book, on the first reading only. Council member Hein seconded the motion. Voting AYE: Council members Lukassen, Kroesing, Schatz, Kirby, Hein, and Smith. Voting NAY: None. The motion carried and Ordinance No. 1006 was passed on first reading only as follows:

**ORDINANCE NO. 1006**

**AN ORDINANCE AMENDING CHAPTER 9: ZONING / BUILDING REGULATIONS OF THE DAVID CITY MUNICIPAL CODE BOOK; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.**

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

Section 1. Chapter 9: Zoning/Building Regulations of the David City Municipal Code Book be amended to read as follows:

**Chapter 9**

**ZONING / BUILDING REGULATIONS**

**Article 1. Zoning / Building Permits**

**§9-201 ZONING / BUILDING PERMIT; LIMITATION.** If the work described in any Zoning Permit has not begun within six (6) months from the date of issuance thereof, said

permit shall expire; it shall be cancelled by the Zoning Administrator; and written notice thereof shall be given to the persons affected.

If the work described in any Zoning / Building Permit has not been substantially completed within two (2) years of the issuance thereof, said Permit shall expire and be cancelled by the Zoning Administrator, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled Permit shall not proceed unless, and until, a new Zoning Permit has been obtained.

**§9-202 ZONING / BUILDING PERMITS.** Any person desiring to commence or proceed to erect, construct, repair, enlarge, demolish, or relocate any building or dwelling, or cause the same to be done, shall file with the Municipal Clerk an application for a zoning / building permit. The application shall be in writing on a form to be furnished by the Municipal Clerk for that purpose. Every such application shall set forth the legal description of the land upon which the construction or relocation is to take place, the current zoning, the nature of the use or occupancy, the principal dimensions, the estimated cost, the names of the owner, architect, and contractor, and such other information as may be requested thereon. Payment of the permit fee set by resolution of the Governing Body is due at the time the application is filed. The application, plans, and specifications so filed with the Municipal Clerk shall be checked and examined by the Zoning Administrator. If the application, plans, and specifications are found to be in conformity with the requirements of this Chapter and all other ordinances applicable thereto, the Zoning Administrator shall authorize the Municipal Clerk to issue the said applicant a permit. Whenever there is a discrepancy between permit application procedures contained herein and those contained in any building code adopted by reference, the provisions contained herein shall govern. (*Ref. 17-130 thru 17-132, 17-550, 17-1001 RS Neb.*)

**§9-203 BUILDING MOVING; REGULATIONS.** It shall be unlawful for any person, firm, or corporation to move any building or structure within the Municipality without a written permit to do so. Application may be made to the Municipal Clerk, and shall include the present and future location of the building to be moved, the proposed route, the equipment to be used, and such other information as the Governing Body may require. The application shall be accompanied by a certificate issued by the County Treasurer to the effect that all the provisions regulating the moving of buildings have been complied with on the part of the owner of the real estate upon which the said building is presently located. The Municipal Clerk shall refer the said application to the Municipal Police for approval of the proposed route over which the building is to be moved. Upon approval of each municipal department head listed on the building moving permit, and upon approval of the Zoning Administrator, the Municipal Clerk shall then issue the said permit; provided, that a good and sufficient corporate surety bond, check, or cash in the amount set by motion of the Governing Body and conditioned upon moving said building without doing damage to any private or Municipal property is filed with the Municipal Clerk prior to the granting of any permit. All buildings wider than ten feet (10'), or longer than twenty feet (20'), or, when in a position to move, higher than fifteen feet (15'), or of any other size which shall require displacement of any City property, shall require a building moving permit and a building moving fee in the amount set by motion of the Governing Body. All other buildings or structures shall require only a building moving permit. In the event it will be necessary for any licensed building mover to interfere with the telephone or

telegraph poles and wires, or a gas line, the company or companies owning, using, or operating the said poles, wires or line shall upon proper notice of at least twenty-four (24) hours, be present and assist by disconnecting the said poles, wires, or line relative to the building moving operation. All expense of the said disconnection, removal, or related work shall be paid in advance by the licensee unless such disconnection or work is furnished on different terms as provided in the said company's franchise. Whenever the moving of any building necessitates interference with a water main, sewer main, pipes, or wire belonging to the Municipality, notice in writing of the time and route of the said building moving operation shall be given to the various Municipal officials in charge of the Municipal utility departments who shall proceed in behalf of the Municipality and at the expense of the mover to make such disconnections and do such work as necessary. (Ref. 60-6,288 to 60-6,294, 60-6,296)

**§9-204** **BUILDING MOVING; DEPOSIT.** At such time as the building moving has been completed, each municipal department head listed on the building moving permit shall inspect the premises and report to the Municipal Clerk as to the extent of damages, if any, resulting from the said relocation and whether any Municipal laws have been violated during the said operation. Upon a satisfactory report from each municipal department head listed on the building moving permit, the Municipal Clerk shall return the corporate surety bond, cash, or check deposited by the applicant. In the event the basement, foundation, or portion thereof is not properly filled, covered, or in a clean and sanitary condition, the Governing Body may apply the money deposited for the purpose of defraying the expense of correcting the said conditions. If the expense of correcting the hazardous condition is greater than the amount of the deposit set by motion of the Governing Body, as required herein, the Governing Body may recover such excess expense by civil suit or otherwise as prescribed by law.

### **Article 3. Building Code**

**§9-301** **BUILDING CODE; ADOPTED BY REFERENCE.** To provide certain minimum standards, provisions, and requirements for safe and stable design, methods of construction, and uses of materials in buildings hereafter erected, constructed, enlarged, altered, repaired, relocated, and converted, the Uniform Building Code the most recent edition, recommended by the International Conference of Building Officials, and printed in book or pamphlet form is hereby incorporated by reference in addition to all amended editions as though printed in full herein insofar as said code does not conflict with the Statutes of the State of Nebraska.

One (1) copy of the Building Code is on file at the office of the Municipal Clerk and is available for public inspection at the city office during their regular business hours. The provisions of the Building Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. (Ref. 17-1001, 18-132, 19-902, 19-922 RS Neb.)

### **Article 4. Plumbing Code**

**§9-401 PLUMBING CODE; ADOPTED BY REFERENCE.** To provide certain minimum standards, provisions, and requirements for safe and stable installation, methods of connection, and uses of materials in the installation of plumbing and heating shall be as found in the Uniform Plumbing Code, the most recent edition, published by the International Association of Plumbing and Mechanical Officials in book or pamphlet form, is hereby incorporated by reference in addition to all amended editions as though printed in full herein insofar as said code does not conflict with the Statutes of the State of Nebraska.

One (1) copy of the Plumbing Code is on file at the office of the Municipal Clerk and is available for public inspection at the city office during their regular business hours. The provisions of the Plumbing Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. (*Ref. 17-1001, 18-132, 19-902, 19-922 RS Neb.*)

#### **Article 5. Electrical Code**

**§9-501 ELECTRICAL CODE; ADOPTED BY REFERENCE.** To provide certain minimum standards, provisions, and requirements for safe and fire proof installation, methods of connection, and uses of materials in the installation of electrical wiring and appliances shall be as found in the National Electrical Code, the most recent edition, as recommended and published by the National Fire Protection Association, printed in book or pamphlet form, in addition to all amended editions as though printed in full herein insofar as said code does not conflict with the statutes of the State of Nebraska. All prior ordinances in conflict herewith shall be and are hereby repealed.

One (1) copy of the Electrical Code is on file at the office of the Municipal Clerk and is available for public inspection at the city office during their regular business hours. The provisions of the Electrical Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. (*Ref. 17-1001, 18-132, 19-902, 19-922 RS Neb.*)

#### **Article 6. Lighting and Thermal Efficiency Standards**

**§9-601 LIGHTING AND THERMAL EFFICIENCY STANDARDS; NEED.**

1. This article shall be known as the Minimum Lighting and Thermal Efficiency Standards for Buildings.
2. The City of David City, Nebraska finds that there is a present and continuing need to provide for the development and implementation of minimum lighting and thermal efficiency standards for buildings to insure coordination with federal policy under the Energy Conservation Standards for New Buildings Act of 1976, to promote the conservation of our dwindling energy resources, and to provide for the public health, safety, and welfare.

**§9-602 TERMS; DEFINED.** As used in this Article, unless the context otherwise requires, the following definitions shall apply:

PRIME CONTRACTOR shall mean the person, persons, entity or entities who has a contract with the owner and is the one responsible for the overall construction of any building or the installation of any component which affects the energy efficiency of the building. Prime Contractor shall also mean a property owner who performs the work of a Prime Contractor.

ARCHITECT or ENGINEER shall mean any person registered pursuant to section 81-847, Reissue Revised Statutes of Nebraska, 1943.

BUILDING shall mean any structure which utilizes or will utilize a heating system, cooling system, or domestic hot water system, including new buildings, renovated buildings, and additions, but not including any structure which has a consumption of traditional energy sources for all purposes not exceeding the energy equivalent of one (1) watt per square foot.

RESIDENTIAL BUILDING shall mean a building three (3) stories or less that is used primarily as one (1) or more dwelling units.

RENOVATION shall mean alterations on an existing building which will cost more than fifty (50%) percent of the replacement cost of such building at the time work is commenced or which was not previously heated or cooled, for which a heating or cooling system is now proposed, except that the restoration of historical buildings shall not be included.

ADDITION shall mean any construction added to an existing building which will increase the floor area of that building by five (5%) percent or more.

FLOOR AREA shall mean the total area of a building, expressed in square feet, which is within the exterior face of the shell of the structure which is heated or cooled.

STANDARD shall mean The Model Energy Code, 1983 Edition, of the Council of American Building Officials.

TRADITIONAL ENERGY SOURCES shall mean electricity, petroleum based fuels, uranium, coal, and all nonrenewable forms of energy. *(Amended by Ord. No. 602, 9/14/83)*

**§9-603** STANDARD; APPLICABILITY. The Standard shall apply to all new buildings, or renovations of or additions to any existing buildings, on which construction is initiated on or after the effective date of this Section. *(Amended by Ord. No. 602, 9/14/83)*

**§9-604** EXEMPTIONS. The following shall be exempt from this act:

1. Any building which has a peak design rate of energy usage for all purposes of less than one (1) watt, or three and four-tenths (3.4) British Thermal Units per hour, per square foot of floor area.
2. Any building which is neither heated nor cooled.
3. Any building or portion thereof which is owned by the United States of America.

4. Any mobile home as defined by section 71-4603, Reissue Revised Statutes of Nebraska, 1943.
5. Any manufactured housing unit as defined by subsection (1) of section 71-1557, Reissue Revised Statutes of Nebraska, 1943.
6. Any building (i) listed on the National Register of Historic Places, (ii) determined to be eligible for the National Register of Historic Places by the State Historic Preservation Officer, or (iii) designated as an individual landmark or heritage preservation site by a Municipality or located within a designated landmark or heritage preservation district.
7. Any building to be renovated that is located within an area that has been designated blighted by a Municipality.
8. All residential buildings shall be exempt from lighting efficiency standards.  
*(Amended by Ord. No. 602, 9/14/83)*

**§9-605 FEES.** The fees, charges, and expenses for Zoning Permits and Certificates of Zoning Compliance shall be as established by the City Council; such fees, charges, and expenses to be set by Resolution.

The schedule of fees shall be posted in the office of the City Clerk and may be altered or amended only by the City Council. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

**§9-606 WHEN ARCHITECT OR ENGINEER IS RETAINED.** If an architect or engineer is retained, the architect or engineer shall place his or her state registration seal on all construction drawings which shall indicate that the design meets the standard. The Prime Contractor shall build or cause to be built in accordance with the construction documents prepared by the architect or engineer.

**§9-607 VIOLATION; PENALTY; ENFORCEMENT.** Any person violating any provision of this Article shall be subject to a maximum fine of five hundred (\$500.00) dollars. In addition, the City of David City may by an action in the District Court enforce the provisions of this Article through equity and injunctive processes.

**§9-608 VALIDITY.** If any Section in this Article or any part of any Section shall be declared invalid or unconstitutional such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

#### **Article 7. Penal Provision**

**§9-701 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.

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

repealed.

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

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

Passed 1<sup>st</sup> reading only 7/13/05  
Mayor Stephen Smith

Passed 1<sup>st</sup> reading only 7/13/05  
City Clerk Joan E. Kovar

Council member Smith made a motion to pass and adopt Resolution No. 10 - 2005. Council member Hein seconded the motion. Voting AYE: Council members Kirby, Lukassen, Kroesing, Schatz, Hein, and Smith. Voting NAY: None. The motion carried and Resolution No. 10 - 2005 was passed and adopted as follows:

**RESOLUTION NO. 10 - 2005**

WHEREAS, the Mayor and City Council of the City of David City, Nebraska, have in the inventory of the City various pieces of equipment, and

WHEREAS, City Staff have occasion to use this equipment to carry out nuisance abatement, grant related activities, and other activities of an unusual manner, and

WHEREAS, the City does assume certain expenses related to abatement of nuisances, maintenance of the public right of ways, and other situations.

NOW, THEREFORE BE IT RESOLVED, that the Mayor and City Council of the City of David City, Nebraska does hereby adopt the following list of charges for the use of City equipment and other City expenses, when said use shall be billed to another party. Said equipment charges shall include the cost of the operator, mileage, and maintenance.

<u>Equipment</u>	<u>Hourly Rate</u>
Loader	\$75.00
Bobcat	\$50.00
Dump Truck	\$50.00
Street Sweeper	\$75.00
Pickup	\$35.00
<u>Other Activities</u>	<u>Rate</u>
Impoundment	\$ 5.00 per day
Personal Service	\$25.00 per service

Passed and approved this 13<sup>th</sup> day of July, 2005.

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Stephen Smith, Mayor

Joan E. Kovar, City Clerk

Council member Smith made a motion to authorize Mayor Stephen Smith to execute an agreement between Kregger Post #125, The American Legion, and the City concerning the airplane on loan from the National Museum of the United States Air Force which is on display at the City Airport. Council member Hein seconded the motion. Voting YEA: Council members Lukassen, Kirby, Schatz, Kroesing, Hein, and Smith. Voting NAY: None. The motion carried.

#### **AGREEMENT**

This Agreement is made and entered into by and between KREGGER POST #125, THE AMERICAN LEGION, DEPARTMENT OF NEBRASKA, hereinafter called "Indemnitor", and THE CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA, a Nebraska Municipal Corporation, hereinafter called "Indemnitee".

WHEREAS, Indemnitor is involved with the National Museum of the United States Air Force (NMUSAF) in their static display program involving an airplane identified as F-84F (RF), 53-7560 with a reassessed value of \$10,000.00 as per the June 7, 2005 letter from the Department of the Air Force attached hereto and incorporated herein by reference as if fully set forth; and,

WHEREAS, the above referenced airplane has been a static display at the Indemnitee's municipal airport for a number of years; and,

WHEREAS, the Indemnitor has asked the Indemnitee to assist in keeping the static display at the Indemnitee's airport and to assist in providing the necessary insurance requested in the above mentioned June 7, 2005 letter; and,

WHEREAS, the Indemnitor is willing to participate in the said static display program and assist in providing the insurance coverage required; and,

WHEREAS, the Indemnitor is willing to do certain things and assume certain responsibilities in return for the Indemnitee continuing the static display and providing the required insurance coverage.

NOW, THEREFORE, the Indemnitor and Indemnitee agree as follows:

- (A) The Indemnitee will continue the static display of the said airplane and will provide the required insurance coverage as per the said June 7, 2005

letter above referenced, but such insurance coverage premium shall not exceed \$250.00 per year.

- (B) The Indemnitor will assume all responsibility for the \$2,500.00 deductible on the insurance policy the Indemnitee will carry and will pay the same should a loss occur requiring a claim and payment of the said deductible.
- (C) The Indemnitor will be solely responsible for the upkeep, maintenance, appearance, and all necessary repairs of the said airplane above referenced should the need arise and as per the static display requirements of NMUSAF.
- (D) The Indemnitor will indemnify and hold the Indemnitee and its property free and harmless from any and all claims, liability, loss, damage, or expense resulting from the static display of the above referenced airplane located on the Indemnitee's municipal airport, specifically including without limitation any claims, loss, or damages arising:
  - (1) By reason of the injury to person or property, from whatever cause, while the static display is on the Indemnitee's property or in any way connected with the static display on the Indemnitee's property including any liability for injury to the person or personal property of the Indemnitor, Indemnitor's agents, officers, or employees;
  - (2) By reason of any work performed, in connection with the static display on the Indemnitee's property at the instance or request of the Indemnitor, Indemnitor's agents, or employees;
  - (3) By reason of the Indemnitor's failure to perform any provisions of the static display requirements of NMUSAF on the Indemnitee's property or the comply with any requirement imposed on Indemnitor or the Indemnitee's property by and duly authorized governmental agency or political subdivision;
  - (4) Because of the Indemnitor's failure or inability to pay as they become due any obligations incurred by Indemnitor with the static display on the Indemnitee's property or other operations connected therewith; particularly the insurance deductible payment of \$2,500.00, if a loss arises.
- (E) The terms and conditions of this Agreement are considered by the Indemnitor and Indemnitee to be valuable considerations.
- (F) This Agreement will be binding upon the heirs, successors, assigns, and personal representatives of the Indemnitor and Indemnitee.

INDEMNITOR:  
KREGGER POST #125, THE AMERICAN  
LEGION, DEPARTMENT OF NEBRASKA

INDEMNITEE:  
THE CITY OF DAVID CITY, BUTLER  
COUNTY, NEBRASKA

by: Dale E. Cooper

by: Stephen Smith

Chairman

Stephen Smith, Mayor

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF BUTLER     )

Before me, a notary public, qualified for said county, personally came Dale E. Cooper, Chairman, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his own voluntary act and deed on behalf of KREGGER POST #125, THE AMERICAN LEGION, DEPARTMENT OF NEBRASKA.

WITNESS my hand and notarial seal on July 18, 2005.

Tami L. Comte

Tami L. Comte, Notary Public

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF BUTLER     )

Before me, a notary public, qualified for said county, personally came Stephen Smith, Mayor, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his own voluntary act and deed on behalf of THE CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA, a Nebraska Municipal Corporation, on behalf of the Municipal Corporation.

WITNESS my hand and notarial seal on July 18, 2005.

Tami L. Comte

Tami L. Comte, Notary Public

**DEPARTMENT OF THE AIR FORCE**  
NATIONAL MUSEUM OF THE UNITED STATES AIR FORCE · 1100 SPAATZ  
STREETWRIGHT PATTERSON AIR FORCE BASE, OHIO 45433-7102

7 June 2005

The National Museum of the United States Air Force (NMUSAF) initiated a re-examination of values previously assigned to the static display program. As the aircraft have had a significant amount of parts and components removed, are no longer airworthy and are not the equivalent of an aircraft on loan to a museum, the assigned values have been adjusted downward to more correctly reflect what the committee believes to be a true insurable value of the aircraft. As such, the F-84F(RF), 53-7560 On loan to your organization has been reassessed a value of \$10,000.

We recommend that in seeking private insurance coverage, your organization advise potential insurance providers that the aircraft on loan is not a flyable aircraft and premium rate determination should not reflect the same risk potential as would be applied to an operational aircraft. The aircraft have been structurally rendered non-flyable and should be considered *static display pieces only*, akin to a statue or monument.

The requirement for recipients of loaned aircraft to possess sufficient financial resources to cover any liability claims has been a part of all conditional deeds and loan agreements for over 30 years. Additionally, a requirement to reimburse the Air Force for any partial or whole replacement costs due to negligence has been a part of all standard loan agreements since 2003. Proof of such insurance coverage (copy of policy) has not been required in the past. A recent incident at Yankee Air Museum in which fire destroyed a number of loan artifacts (including an F-105 aircraft), precipitated NMUSAF's decision to require proof of insurance coverage from all its loan recipients. After the fire it was learned Yankee Air Museum did not possess the required insurance to cover loaned property, thus the change in the requirement for proof of insurance.

Should American Legion Post 125 determine they are unable to meet the loan conditions outlined in the loan agreement; they will need to notify the NMUSAF in writing and officially declare the aircraft excess. NMUSAF will then make every effort to place the aircraft at a new site. Assuming a new site is located, the Post would be released from all financial obligation associated with relocation, as the new requesting organization will bear those costs.

If you have any additional questions please contact me at (937) 255-5174 ext 370.

Sincerely

PATRICIA A. OCHS  
Static Display  
Program Administrator  
Plans and  
Programs Division

Council member Kirby introduced Ordinance No. 1007. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Kirby seconded the motion. Voting YEA: Council members Smith, Schatz, Hein, Lukassen, Kirby, and Kroesing. Voting NAY: None. The motion carried.

Council member Kirby made a motion to pass and adopt Ordinance No. 1007 on the third and final reading. Council member Kroesing seconded the motion. Voting YEA: Council members Lukassen, Schatz, Smith, Hein, Kroesing, and Kirby. Voting NAY: None. The motion carried and Ordinance No. 1007 was passed on third and final reading as follows:

**ORDINANCE NO. 1007**

AN ORDINANCE INCORPORATING A 3% COST OF LIVING INCREASE, SETTING THE PAY AND PAY SCALES FOR THE EMPLOYEES OF THE CITY OF DAVID CITY, NEBRASKA; REPEALING ALL ORDINANCES OR PORTIONS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; AND PROVIDING FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT.

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

**SECTION 1.** The Mayor and City Council of David City, Nebraska, do hereby establish and fix the pay scales and pay rates for the following positions for the employees of the City of David City, Nebraska:

**SECTION 2.** The wages for the Library Director and Librarians are set by the Library Board and therefore are not included.

**Part-Time Workers**

Years in Position	0	6m	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Part-time workers	\$6.62	6.90	7.05	7.18	7.26	7.34	7.46	7.58	7.73	7.86	8.00	8.15	8.28	8.45	8.64	8.83	9.00	9.21	9.38	9.55	9.75	9.94
Building Inspector	\$15.45/hr.																					
Bartenders	Begin @ \$6.00/hr - experienced up to \$6.30																					
Recycling workers -	Begin @ \$6.00/hr - experienced up to \$6.43																					
Years in Position	0	1	2	3	4																	
Summer Time Help -	\$6.12	6.12	6.37	6.62	6.87	(not including swimming pool employees who are covered by a separate ordinance)																

**Full-Time Workers**

<b>Years in Position:</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>	<b>I</b>	<b>J</b>	<b>K</b>	<b>L</b>	<b>M</b>	<b>N</b>	<b>O</b>	<b>P</b>	<b>Q</b>	<b>R</b>	<b>S</b>	<b>T</b>	<b>U</b>	<b>V</b>
<b>0</b>	<b>6m</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	
<b>OFFICE STAFF:</b>																						
Clerical I	9.45	9.58	9.69	9.83	9.95	10.08	10.20	10.32	10.45	10.58	10.70	10.83	10.95	11.07	11.21	11.32	11.44	11.58	11.70	11.82	11.95	12.06
Police Clerical	8.98	9.32	9.49	9.64	9.70	9.76	9.83	9.91	10.00	10.10	10.20	10.28	10.37	10.44	10.51	10.57	10.62	10.67	10.73	10.80	10.87	10.93
Acct Clerk I	9.52	9.66	9.83	9.98	10.15	10.30	10.46	10.63	10.77	10.94	11.10	11.26	11.41	11.58	11.74	11.91	12.04	12.18	12.32	12.45	12.62	12.76
Acct Clerk II (incl. +.50 for CMC)	12.24	12.51	12.68	12.83	12.96	13.06	13.15	13.34	13.50	13.67	13.85	14.06	14.24	14.35	14.48	14.60	14.74	14.86	14.99	15.13	15.27	15.42
<b>UTILITY STAFF:</b>																						
Power Plant Operator I	9.98	10.15	10.36	10.58	10.77	10.99	11.20	11.39	11.60	11.81	12.02	12.26	12.45	12.67	12.88	13.08	13.32	13.51	13.73	13.96	14.16	14.40
Power Plant Operator II	12.06	12.60	13.17	13.33	13.49	13.68	13.95	14.21	14.49	14.76	15.04	15.29	15.49	15.65	15.84	16.02	16.20	16.37	16.57	16.74	16.83	16.92
Power Plant Operator III	15.37	15.55	15.70	15.89	16.03	16.19	16.34	16.49	16.67	16.82	16.98	17.17	17.33	17.49	17.67	17.84	18.00	18.18	18.35	18.52	18.69	18.87
Apprentice Lineman	11.62	11.94	12.10	12.27	12.36	12.45	12.58	12.74	12.90	13.05	13.21	13.38	13.52	13.64	13.73	13.85	13.96	14.06	14.15	14.24	14.38	14.47
Line worker II	13.81	14.11	14.27	14.47	14.57	14.69	14.80	14.98	15.15	15.32	15.52	15.69	15.87	16.01	16.15	16.28	16.39	16.51	16.64	16.77	16.90	17.05
Line worker I	16.36	16.71	16.87	17.05	17.17	17.29	17.43	17.62	17.82	18.00	18.19	18.36	18.57	18.70	18.84	18.98	19.12	19.26	19.41	19.53	19.66	19.80
Line Foreman	17.27	17.87	17.99	18.24	18.39	18.55	18.72	18.95	19.19	19.43	19.67	19.90	20.14	20.28	20.46	20.60	20.78	20.92	21.09	21.24	21.37	21.55
Water/Sewer Operator I	9.98	10.26	10.41	10.58	10.68	10.77	10.88	11.04	11.22	11.37	11.55	11.71	11.89	11.99	12.11	12.25	12.35	12.47	12.60	12.73	12.85	12.98
WA/SE Op 1 w Grade VI	10.56	10.83	10.99	11.15	11.25	11.34	11.44	11.61	11.78	11.94	12.11	12.29	12.44	12.57	12.68	12.80	12.93	13.04	13.15	13.31	13.42	13.53
WA/SE Operator II	12.05	12.24	12.39	12.57	12.74	12.92	13.07	13.27	13.42	13.59	13.77	13.96	14.13	14.30	14.50	14.67	14.85	15.05	15.22	15.40	15.59	15.77
WA/SE Op I I w Gr VI	12.62	12.78	12.96	13.11	13.31	13.46	13.64	13.81	13.99	14.14	14.35	14.51	14.69	14.86	15.06	15.23	15.41	15.60	15.78	15.97	16.15	16.33
<p style="text-align: center;"><b>A   B   C   D   E   F   G   H   I   J   K   L   M   N   O   P   Q   R   S   T   U   V</b></p>																						



City Clerk Joan E. Kovar

Council member Kirby made a motion to revise the Employee's Manual by amending Chapter IV - Benefits to state: 5. Retirement System: The City will match employee contributions in an amount equal to the greater of **6%** of regular pay or \$50.00 per month to a regular employee's Deferred Compensation Plan, effective September 26, 2005. Council member Smith seconded the motion. Voting YEA: Council members Hein, Lukassen, Schatz, Kroesing, Smith, and Kirby. Voting NAY: None. The motion carried.

Council member Hein made a motion to go into executive session to discuss the procedures for City Administrator Jeff Fiegenschuh's evaluation and salary consideration. Council member Kirby seconded the motion. Voting YEA: Council members Schatz, Lukassen, Kroesing, Smith, Kirby, and Hein. Voting NAY: none. The motion carried. The Mayor and City Council went into executive session at 9:25 p.m. accompanied by City Attorney Egr.

Council member Kirby made a motion to come out of executive session. Council member Kroesing seconded the motion. Voting YEA: Council members Lukassen, Hein, Schatz, Smith, Kroesing, and Kirby. Voting NAY: none. The motion carried and the Mayor and Council came out of executive session at 9:52 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 Schatz, Smith, Kirby, Lukassen, Hein, and Kroesing. Voting NAY: None. The motion carried and Mayor Smith declared the meeting adjourned at 9:53 p.m..

Mayor Stephen Smith

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES  
July 13, 2005

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of July 13, 2005; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Joan E. Kovar