

CITY COUNCIL PROCEEDINGS

August 13, 2008

The City Council of the City of David City, Nebraska, met in open public session in the meeting room of the City Office, 557 N 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on August 7th, 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, Ted Lukassen, Nick Hein, Bill Schatz, and Bill Scribner, City Administrator Joe Johnson, City Attorney Jim Egr, and City Clerk-Treasurer Joan Kovar. Council member Bill Yindrick was absent.

Also present were: Police Chief Stephen Sunday, Water/Sewer employees Gary Janicek and Scott Boyd, Jeff Thompson of Timpte, Alan Zavodny, Sally, Don, & Bill McLaughlin, Jim J. Steager, Marianne Long and son Frankie, Phil Lorenzen of D.A. Davidson & Company, Jim & Mary Redler, Gary Kroesing, Doug Matulka, Matt Hilger, Mark Sloup, Bob Hilger, Rick Schneider, Kevin Hotovy, Jeff Hilger, Mike Rogers, Mike Novotny, Bruce Meysenburg, George Mastera, Jim Vandenberg, Dr. Jack Kaufmann, Pam Kabourek, Marge Grubaugh, 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 and Resolution No. 2-2008 establishing rules and procedures for public participation at city council meetings.

The minutes of the July 9th, 2008 meeting of the Mayor and City Council were approved upon a motion by Council member Hein and seconded by Council member Smith. Voting AYE: Council members Lukassen, Schatz, Scribner, Smith, and Hein. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Mayor Trowbridge asked for Petitions, Communications, and Citizens' Concerns in addition to those contained in the Agenda packets. Council member Smith stated that there was curb damage on the corner of 6th & "G" Street probably due to cement trucks and delivery trucks. Street Superintendent McDonald is to take a look at this intersection.

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. Council member Hein questioned why the police department's Alltel cellular phone bill spiked. Police Chief Sunday stated he didn't know and would have to take a look at it. Voting AYE: Council members Scribner, Hein, Schatz, Lukassen, and Smith. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Mayor Trowbridge scheduled a Committee of the Whole meeting for Monday, August 25th, 2008, 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.

Council member Scribner made reference to Police Chief Sunday's report that the Butler County Attorney's Office has a juvenile diversion program. County Attorney Julie Reiter hired an individual to run the program but has run into an office space problem. County Attorney Reiter has made inquiry if the police department had any office space available that her juvenile diversion official could use. Council member Scribner asked Police Chief Sunday if there was room in the police station and Police Chief Sunday answered "yes". There were no additional reports.

Council member Scribner made a motion to accept the Committee and Officers' Reports as contained in the Agenda packets. Council member Smith seconded the motion. Voting AYE: Council members Schatz, Hein, Lukassen, Smith, and Scribner. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Scribner made a motion to advance to agenda item #17 - Public Hearing to consider vacating "S" Street from the west side of Industrial Drive to the dead-end of "S" Street which is approximately 647' in length. Council member Schatz seconded the motion. Voting AYE: Council members Smith, Lukassen, Hein, Schatz, and Scribner. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Mayor Trowbridge declared the Public Hearing open at 7:08 p.m. to consider vacating "S" Street from the west side of Industrial Drive to the dead-end of "S" Street which is approximately 647' in length. City Administrator Johnson stated a petition signed by Jeff Thompson for Tipte Inc, and Gary D. Niemann Sr., was filed at the City Office asking that an ordinance be adopted vacating the public right of way that is located west of the intersection of Industrial Drive and S Road in David City, Nebraska. City Administrator Johnson also stated that the following letter was received from Don McLaughlin: *"I request that the following agenda item be added to the agenda for the David City, City Council Meeting, for the evening of August 13th, 2008. "The McLaughlin Family is in agreement to allow the City of David City a 60' easement right-of-way across our property, from the dead-end of the current "S" Road, straight west to the intersection of County Road "M", to allow for the future installation/construction of a road, storm sewer drainage system, utilities, and other governmental functions, that may be appropriate. The McLaughlin Family also is in agreement for the City Attorney of David City to authorize such documents to coincide with the McLaughlin Family intentions."* City Administrator Johnson suggested tabling this item to allow time for the City and the McLaughlin Family to speak and work out arrangements. There being no further comments, Mayor Trowbridge closed the Public Hearing at 7:10 p.m..

Council member Schatz made a motion to advance to agenda item #18 - Consideration of Ordinance No. 1082 vacating "S" Street from the west side of Industrial Drive to the dead-end of "S" Street which is approximately 647' in length. Council member Scribner seconded the motion. Voting AYE: Council members Smith, Lukassen, Hein, Scribner, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz made a motion to table consideration of Ordinance No. 1082 vacating "S" Street from the west side of Industrial Drive to the dead-end of "S" Street which is

approximately 647' in length. Council member Hein seconded the motion. Voting AYE: Council members Lukassen, Scribner, Smith, Hein, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried and Ordinance No. 1082 was tabled.

ORDINANCE NO. 1082

AN ORDINANCE VACATING "S" STREET FROM THE WEST SIDE OF INDUSTRIAL DRIVE TO THE DEAD-END OF "S" STREET WHICH IS APPROXIMATELY 647' IN LENGTH, DAVID CITY, BUTLER COUNTY, NEBRASKA; PROVIDING FOR THE RETENTION OF ANY UTILITY EASEMENTS; PROVIDING FOR AN EFFECTIVE DATE THEREOF, AND PROVIDING FOR PUBLICATION IN PAMPHLET FORM.

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

SECTION 1. The Mayor and Council of the City of David City, Nebraska, received a Petition of Consent and Waiver asking that an ordinance be adopted vacating the public right of way that is located west of the intersection of Industrial Drive and "S" Street in David City Nebraska.

SECTION 2. The Mayor and City Council have found and determined that it is in the best interest of the City and is expedient for the public good to vacate part of "S" Street.

SECTION 3. That "S" Street from the west side of Industrial Drive to the dead-end of "S" Street which is approximately 647' in length, (running east and west), is hereby vacated.

SECTION 4. That the portion of vacated "S" Street shall revert to the abutting property owners.

SECTION 5. That the City of David City, and its franchisees, shall retain an easement to all existing and future utilities located within said vacated street.

SECTION 6. Any and all ordinances, or sections thereof, passed and approved prior to the passage, approval and publication or posting of this ordinance, and in conflict with its provisions, are hereby repealed.

SECTION 7. This ordinance shall be published in pamphlet form and shall be in full force and effect following its passage, approval, and publication as provided by law and city ordinance.

PASSED AND APPROVED this _____ day of _____, 2008.

Tabled _____
Mayor Dana Trowbridge

Tabled _____
City Clerk Joan E. Kovar

Council member Schatz made a motion to advance to agenda item #19 - Public Hearing concerning the annexation of property legally described as: A tract of land located in the N $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 18 T15N R3E of the 6th P.M., Butler County, Nebraska, described as follows: Commencing at the southeast corner of said N $\frac{1}{2}$; thence westerly, 341.60 feet, on the south line of said N $\frac{1}{2}$, to the Point of Beginning, said Point being the southwest corner of a parcel of land conveyed in Microfilm Book 81 page 521; thence continuing westerly, 977.83 feet, on the last described line, to the southwest corner of said N $\frac{1}{2}$; thence northerly, 658.98 feet, to the northwest corner of said N $\frac{1}{2}$; thence easterly, 979.92 feet, on the north line of said N $\frac{1}{2}$; thence southerly, 657.35 feet, to the Point of Beginning, containing 14.79 acres, more or less; (Niemann/Timpte). Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Hein, Scribner, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Mayor Trowbridge declared the Public Hearing open at 7:12 p.m. concerning the annexation of property legally described as: A tract of land located in the N $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the

SW $\frac{1}{4}$ of Section 18 T15N R3E of the 6th P.M., Butler County, Nebraska, described as follows: Commencing at the southeast corner of said N $\frac{1}{2}$; thence westerly, 341.60 feet, on the south line of said N $\frac{1}{2}$, to the Point of Beginning, said Point being the southwest corner of a parcel of land conveyed in Microfilm Book 81 page 521; thence continuing westerly, 977.83 feet, on the last described line, to the southwest corner of said N $\frac{1}{2}$; thence northerly, 658.98 feet, to the northwest corner of said N $\frac{1}{2}$; thence easterly, 979.92 feet, on the north line of said N $\frac{1}{2}$; thence southerly, 657.35 feet, to the Point of Beginning, containing 14.79 acres, more or less; (Niemann/Timpte). Jeff Thompson of Timpte stated that Timpte recently purchased this land from Gary Niemann and they are requesting that the property be annexed in order to qualify for tax increment financing and other funds to be used for economic development and infrastructure improvements. Timpte will use the land for storage of finished trailers and a transfer area. There being no further comments, Mayor Trowbridge closed the Public Hearing at 7:14 p.m..

Council member Schatz made a motion to advance to agenda item #20 - Consideration of Ordinance No. 1083 annexing a tract of land located in the N $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 18 T15N R3E of the 6th P.M., Butler County, Nebraska legally described above. Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Hein, Scribner, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz introduced Ordinance No. 1083 {Niemann/Timpte property} and made a motion to pass and adopt Ordinance No. 1083 on the first reading only. Council member Hein seconded the motion. Voting AYE: Council members Scribner, Smith, Lukassen, Hein, and Schatz. Voting NAY: None. Council members Yindrick was absent. The motion carried and Ordinance No. 1083 was passed on first reading as follows:

ORDINANCE NO. 1083

AN ORDINANCE TO EXTEND THE BOUNDARIES AND INCLUDE WITHIN THE CORPORATE LIMITS OF, AND TO ANNEX TO, THE CITY OF DAVID CITY, NEBRASKA, A TRACT OF LAND LOCATED IN THE N $\frac{1}{2}$ OF THE NE $\frac{1}{4}$ OF THE SW $\frac{1}{4}$ OF SECTION 18 T15N R3E OF THE 6TH P.M., BUTLER COUNTY, NEBRASKA, CONTAINING 14.79 ACRES, MORE OR LESS; TO PROVIDE BENEFITS THERETO; TO PROVIDE FOR SEVERABILITY; TO CONFIRM ZONING CLASSIFICATION; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND TO AUTHORIZE PUBLICATION IN PAMPHLET FORM.

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

- SECTION 1: It is hereby found and determined by the Mayor and City Council that:
- (a) The tract of land located in the N $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 18 T15N R3E of the 6th P.M., Butler County, Nebraska, described as follows:
Commencing at the southeast corner of said N $\frac{1}{2}$; thence westerly, 341.60 feet, on the south line of said N $\frac{1}{2}$, to the Point of Beginning, said Point being the southwest corner of a parcel of land conveyed in Microfilm Book 81 page 521; thence continuing westerly, 977.83 feet, on the last described line, to the southwest corner of said N $\frac{1}{2}$; thence northerly, 658.98 feet, to the northwest corner of said N $\frac{1}{2}$; thence easterly, 979.92 feet, on the north line of said N $\frac{1}{2}$; thence southerly, 657.35 feet, to the Point of Beginning,

- containing 14.79 acres, more or less, is urban and suburban in character and contiguous and adjacent to the corporate limits of said city;
- (b) Police, fire, and snow removal benefits will be immediately available thereto, and City water will be available as provided by law;
 - (c) The Zoning classification of such territory as shown on the official zoning map of the City of David City, Nebraska, is hereby confirmed;
 - (d) There is a unity of interest in the use of such territory with the use of lots, lands, streets, and highways in the City, and the community convenience and welfare and the interest of said City will be enhanced through incorporating such territory within the corporate limits of said City.

SECTION 2: That the boundaries of the City of David City, Nebraska, be and hereby are, extended to include within the corporate limits of said City the contiguous and adjacent territory described in Section 1 (a) above.

SECTION 3: That a certified copy of this Ordinance, together with the map of the territory, be filed on record in the offices of the County Clerk of Butler County, Nebraska.

SECTION 4: That said territory is hereby annexed to the City of David City, Nebraska.

SECTION 5: Upon the taking effect of this Ordinance, the police, fire and snow removal services of said City shall be furnished to the territory herein annexed, and water services will be available as provided by law.

SECTION 6: If any section, subsection, sentence, clause or phrase of this Ordinance or the annexation of the territory by this Ordinance is for any reason held to be unconstitutional or involved, such decision shall not effect the validity of the annexation of other tracts of land, streets or highways by this Ordinance, since it is the express intent of the Mayor and City Council to enact each section, subsection, clause or phrase separately and to annex each tract of land separately.

SECTION 7: 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 8: 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 _____th day of _____, 2008.

Passed on 1st reading 8/13/08
Mayor Dana Trowbridge

Passed on 1st reading 8/13/08
City Clerk Joan E. Kovar

Council member Schatz introduced Resolution No. 17 - 2008 and moved for its passage and adoption. Council member Hein seconded the motion. Voting AYE: Council members Smith, Scribner, Lukassen, Hein, and Schatz. Voting NAY: None. Council member Yindrick

was absent. The motion carried and Resolution No. 17 - 2008 was passed and approved as follows:

RESOLUTION NO. 17 - 2008

WHEREAS, Section 71-3305 of the Nebraska Statutes requires any city with a population of one thousand or more to add fluoride to the city's water system; and

WHEREAS, Section 71-3305 allows the voters of a city to vote to adopt an ordinance before June 1, 2010, to prohibit the addition of fluoride to the city water system; and

WHEREAS, Section 71-3305 authorizes the governing body to place the ordinance to prohibit the addition of fluoride to the city water system on the ballot; and

WHEREAS, the Mayor and City Council of the City of David City, Nebraska, have determined that there is interest in determining whether fluoride should be added to the city's water system.

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

Section 1. That at the general election to be held on Tuesday, November 4, 2008, the issue of whether the City of David City, Nebraska, should adopt or reject an ordinance to prohibit the addition of fluoride to the City water system shall be submitted to the qualified electors of the City and to be presented in the following form:

Shall the City of David City, Nebraska, adopt an ordinance to prohibit the addition of fluoride to the City's water system?

No (We desire fluoride in the water)

Yes (We desire to prohibit fluoride in the water)

Section 2. That the City Clerk is authorized and directed to certify a copy of this resolution to the election commissioner/county clerk at least fifty days prior to the election. The City agrees to reimburse the election commissioner/county clerk for the expenses of conducting the election, as required by law.

Adopted by the City Council of the City of David City, Nebraska, on August 13, 2008.

Dana Trowbridge, Mayor

Joan E. Kovar, City Clerk

The following letter was received and acknowledged concerning adding fluoride to the city's water system:

I am Dr. Jack Kaufmann. I was a medical doctor in David City for 41 years until I retired 9 years ago.

I am opposed to adding fluoride to the David City public water supply, which many of us drink. Our state government wants us to add fluoride to our water supply because fluoride helps to prevent tooth decay (cavities). What our state government doesn't tell us is that fluoride can also damage the teeth of children by causing poorly-shaped teeth, and teeth with spots in the enamel.

Other problems with drinking fluoridated water:

- ❖ Fluoride accumulates in the body as a person gets older, and it is harmful to the bones. An elderly person who has been drinking fluoridated water has a 3 times greater chance of breaking a hip bone than an elderly person who has not drunk fluoridated water.
- ❖ In excessive amounts, fluoride is a poison. The machinery which adds fluoride to a public water supply sometimes malfunctions, and dumps too much fluoride into the water, poisoning the water. This happened in Hooper Bay, Alaska in 1992; many people became ill, and one man died.
- ❖ Some people think that fluoride may cause mental impairment, and that it may also cause cancer.

Respectfully,
Dr. Kaufmann
August, 2008

Nebraska Revised Statute #35-109 currently states: *"Sirens; restriction on use. No siren or other similar device whose primary purpose is to warn the public of a natural or manmade emergency or disaster shall be used to notify volunteer firefighters of a fire or to summon volunteer firefighters to a fire. This section applies only to cities of the first class located within a county which contains a city of the metropolitan class."* The council discussed submitting a 2009 Legislative Suggestion to the League of Municipalities to change Nebraska Revised Statute 35-109 to allow for Municipal Government control of emergency sirens. It was suggested to amend #35-109 to read: *Sirens; restriction on use. No siren or other similar device whose primary purpose is to warn the public of a natural or manmade emergency or disaster shall be used to notify volunteer firefighters of a fire or to summon volunteer firefighters to a fire unless three-fourths of the council members of a city vote to suspend this requirement.*

Citizen Mike Rogers asked what brought this subject up and questioned why the City couldn't work with the fire department on the siren issue. Fire Chief Matt Hilger asked what the City's main goal was. Mayor Trowbridge said it was to move into the millennium; David City can move ahead; cities of the first class cannot use sirens to notify volunteer firefighters. Jim Redler stated that David City has no paid firefighters unlike cities of the first class; they are all volunteer. Matt Hilger stated that this is a public safety issue; there are a lot of basements where you can't get a page. Bruce Meysenburg stated that perhaps the City should let the citizens of David City vote on the issue of when to blow the sirens. Council member Scribner stated that he can't support this; he doesn't want the fire sirens messed with at all. Gary Kroesing questioned why the City wants to be in the forefront of proposing this. Council member Hein stated David City will be testing the water.

Council member Hein made a motion to submit a 2009 Legislative suggestion to the League of Municipalities to change Nebraska Revised Statute 35-109 to allow for Municipal Government control of emergency sirens. Council member Schatz seconded the motion.

Voting AYE: Council members Lukassen, and Hein. Voting NAY: Council members Scribner, Smith, and Schatz. Council member Yindrick was absent. The motion failed.

Nebraska Revised Statute 19-926 currently states: *Planning commission; members; term; removal; vacancies; alternate members. (1) The planning commission shall consist of nine regular members who shall represent, insofar as is possible, the different professions or occupations in the municipality and shall be appointed by the mayor, by and with the approval of a majority vote of the members elected to the council or the village board. Two of the regular members may be residents of the area over which the municipality is authorized to exercise extraterritorial zoning and subdivision regulation. When there is a sufficient number of residents in the area over which the municipality exercises extraterritorial zoning and subdivision regulation, one regular member of the commission shall be a resident from such area. If it is determined by the city council or village board that a sufficient number of residents reside in the area subject to extraterritorial zoning or subdivision regulation, and no such resident is a regular member of the commission, the first available vacancy on the commission shall be filled by the appointment of such an individual. For purposes of this section, a sufficient number of residents shall mean: (a) For a village, two hundred residents; (b) for a city of the second class, five hundred residents; and (c) for a city of the first class, one thousand residents. A number of commissioners equal to a majority of the number of regular members appointed to the commission shall constitute a quorum for the transaction of any business. **All regular members of the commission shall serve without compensation** and shall hold no other municipal office except when appointed to serve on the board of adjustment as provided in section 19-908. The term of each regular member shall be three years, except that three regular members of the first commission to be so appointed shall serve for terms of one year, three for terms of two years, and three for terms of three years. All regular members shall hold office until their successors are appointed. Any member may, after a public hearing before the council or village board, be removed by the mayor with the consent of a majority vote of the members elected to the council or village board for inefficiency, neglect of duty or malfeasance in office, or other good and sufficient cause. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired portion of the term by the mayor.*

Council member Schatz made a motion to submit a 2009 Legislative suggestion to the League of Municipalities to change Nebraska Revised Statute 19-926 to allow for compensation of Planning Commission members. Council member Hein seconded the motion. Council member Schatz stated that he has been advocating for this for years based on the amount of work, and the important work, that the Planning Commission members do. Voting AYE: Council members Lukassen, Scribner, Smith, Hein, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Vice President Phil Lorenzen of D.A. Davidson & Company reported on the call for redemption and the issuance of Water Revenue and Refunding Bonds and reported that the interest rates have been locked-in. The savings is \$23,678.53 net of any and all costs of the transaction. The interest rate on the refunding portion drops from 4.69% to a new average of 4.044%.

Water employee Gary Janicek reported that the City currently has four wells in service. Two wells are located on east "H" Street and each well pumps 900 gals/minute. One was put in 3 years ago and the other was constructed in the early 80's. The other two wells pump 300 - 400 gallons a minute and were constructed in the 50's and 60's.

Council member Schatz introduced Resolution No. 18 - 2008 and moved for its passage and adoption. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Hein, Lukassen, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried and Resolution No. 18 - 2008 was passed and adopted as follows:

RESOLUTION NO. 18 - 2008

RESOLUTION CALLING WATER REVENUE REFUNDING BONDS,
SERIES 2003 FOR REDEMPTION

BE IT RESOLVED by the Mayor and City Council of the City of David City, Nebraska, as follows:

Section 1. That the following bonds are hereby called for redemption at par, plus accrued interest on September 15, 2008 after which date said bonds shall cease to bear interest

Water Revenue Refunding Bonds, Series 2003, Dated October 1, 2003, in the principal amount of \$755,000, maturing and becoming due on August 1, 2009, through August 1, 2020, both inclusive, which bonds were issued by the City for the purpose of refunding and retiring together with cash on hand the City's outstanding \$996,000 balance of its Series 1980 Water Revenue Bond.

Section 2. Said bonds are payable at the office of the Treasurer of David City, Nebraska, as Paying Agent and Registrar.

Section 3. A copy of this resolution shall be filed at least 30 days prior to the date of call with the Treasurer of David City, Nebraska, as Paying Agent and Registrar and said Paying Agent and Registrar is hereby instructed to give notice of redemption in the manner provided for in the ordinance authorizing said bonds.

PASSED AND APPROVED this 13th day of August 2008.

Mayor Dana Trowbridge

ATTEST:

City Clerk Joan E. Kovar

[SEAL]

Council member Schatz made a motion to advance to agenda item #38 - Consideration of Ordinance No. 1088 authorizing the issuance of Water Revenue and Refunding Bonds, Series 2008, to refund outstanding Series 2003 Bonds and fund new water project costs. Council member Hein seconded the motion. Voting AYE: Council members Smith, Lukassen, Scribner, Hein, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz introduced Ordinance No. 1088. Council member Schatz made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Scribner, Hein, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz made a motion to pass and adopt Ordinance No. 1088 on the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Lukassen, Hein, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried and Ordinance No. 1088 was passed and adopted as follows:

ORDINANCE NO. 1088

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, AUTHORIZING THE ISSUANCE OF WATER REVENUE AND REFUNDING BONDS OF THE CITY OF DAVID CITY, NEBRASKA, SERIES 2008, IN THE PRINCIPAL AMOUNT OF ONE MILLION FOUR HUNDRED FIFTEEN THOUSAND DOLLARS (\$1,415,000), FOR THE PURPOSE OF REFUNDING, TOGETHER WITH CASH ON HAND, THE \$755,000 PRINCIPAL BALANCE OF THE CITY'S OUTSTANDING WATER REVENUE REFUNDING BONDS, SERIES 2003; FOR THE PURPOSE OF PROVIDING FUNDS FOR THE CONSTRUCTION OF IMPROVEMENTS TO THE CITY'S WATER SYSTEM; PROVIDING FOR NECESSARY RESERVE FUNDS AND PAYING COSTS OF ISSUANCE OF SAID BONDS; PRESCRIBING THE FORM, TERMS AND DETAILS OF SAID BONDS; PLEDGING AND HYPOTHECATING THE REVENUE AND EARNINGS OF THE WATER SYSTEM OF SAID CITY FOR THE PAYMENT OF SAID BONDS AND INTEREST THEREON; PROVIDING FOR THE COLLECTION, SEGREGATION AND APPLICATION OF THE REVENUE OF SAID WATER SYSTEM; ENTERING INTO A CONTRACT ON BEHALF OF THE CITY WITH THE HOLDERS OF SAID BONDS; REPEALING ANY CONFLICTING ORDINANCES AND PROVIDING FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM.

BE IT ORDAINED by the Mayor and the City Council of the City of David City, Nebraska, as follows:

Section 1. The Mayor and Council of the City of David City, Nebraska, hereby find and determine that (a) the City owns and operates water works facilities and a water system which constitutes a revenue producing facility and undertaking within the meaning of such term as set forth in Sections 18-1803 to 18-1805 Reissue Revised Statutes of Nebraska, as amended; that said water works facilities and water system, taken together with all additions and improvements thereto hereafter acquired or constructed are herein referred to as the "Water System"; that there is presently no outstanding indebtedness of the City, bonded or otherwise, except for the Outstanding Bonds (as described and defined in this Section 1), for which the revenues of the Water System have been pledged or hypothecated in any manner; and (b) that there have been heretofore issued and are now outstanding and unpaid a valid and interest bearing bond of the City of David City, Nebraska, consisting of its Water Revenue Refunding Bonds, Series 2003 of the total unpaid and outstanding principal amount of \$755,000 (the "Series 2003 Bonds") and Water Revenue Bond, Series 2004, issued as a promissory note to the Nebraska Department of Environmental Quality (the "Series 2004 Bond") which Series 2003 Bonds and Series 2004 Bond are more fully described as follows:

Series 2003 Water Revenue Refunding Bonds of the original principal amount of \$990,000, of which bonds in the principal amount of \$755,000 remain outstanding and bear interest and mature as set out in the following schedule of payments:

<u>Principal Amount</u>	<u>Maturing August 1</u>	<u>Interest Rate</u>
\$50,000	2009	3.40
55,000	2010	3.75
55,000	2011	4.00
55,000	2012	4.15
60,000	2013	4.30
60,000	2014	4.40
135,000	2016	4.65
140,000	2018	4.85
70,000	2019	4.90
75,000	2020	5.00

Provided, however, bonds maturing August 1, 2016 and August 1, 2018 are subject mandatory call for redemption through application of sinking fund payments, said bonds being callable by lot in the amount and on the dates as set out below at par plus accrued interest to the date of such call:

\$135,000 Principal Maturing August 1, 2016

\$65,000 To Be Called August 15, 2015

\$70,000 Maturing August 15, 2016

\$140,000 Principal Maturing August 15, 2018

\$70,000 To Be Called August 15, 2017

\$70,000 Maturing August 15, 2018

The Series 2003 Bonds became callable anytime on or after August 1, 2007, at par and accrued interest to the date fixed for redemption and that said bonds as set out above, becoming due and payable on August 1, 2009 through August 1, 2020 have been called and are hereby ordered called in accordance with their call provisions on September 15, 2008 (the "Redemption Date").

Series 2004 NDEQ Promissory Note issued in the original drawable amount of \$700,000, in the approximate remaining principal amount of \$545,465.75, bearing interest at the rate of 2.51% annually plus a 1.00% fee payment for a total interest rate of 3.51%, payable in relatively equal semiannual installments due each June 15 and December 15, with the final payment due and payable December 15, 2021.

The Series 2003 Bonds and Series 2004 Bonds are collectively referred to herein as the "Outstanding Bonds". The Series 2003 Bonds are valid, interest bearing obligations of the City payable from the revenues of the Water System. Since the Series 2003 Bonds were issued, the rates of interest available in the market have so declined that by taking up and paying off said bonds on said call date, a substantial savings in the amount of yearly running interest will be made to the City. For the purpose of making said redemption of the Series 2003 Bonds on the Redemption Date, it is in the best interest of the City to apply certain monies on hand and to issue water revenue refunding bonds of the City in the principal amount of \$763,000. The City has on

hand no debt service or sinking fund monies available to pay the Series 2003 Bonds, except for a debt service reserve fund in the amount of \$80,000 for the Series 2003 Bonds, from which existing debt service reserve fund certain amounts are hereby directed to be transferred to the 2008 Debt Service Reserve Account to fund a portion of the total required debt service reserve for the Series 2008 Bonds authorized herein as set out in this Ordinance. All conditions, acts and things required to exist or to be done precedent to the issuance of water revenue refunding bonds of the City of David City, Nebraska, in the principal amount of seven hundred sixty-three thousand dollars (\$763,000) pursuant to Sections 10-142, and Sections 18-1803 to 18-1805, Reissue Revised Statutes of Nebraska, as amended, do exist and have been done as required by law.

Section 2. The Mayor and City Council further find and determine that certain improvements, enlargements and expansion of the City's Water System are necessary in order to continue to provide the City and its residents with water services; that to provide for the costs of improving, enlarging and expanding certain portions of the Water System, the City is authorized to issue water revenue bonds of the City, pursuant to Sections 18-1803 to 18-1805, Reissue Revised Statutes of Nebraska, as amended, in the aggregate principal amount of \$652,000 and further find and determine that pursuant to Sections 1 and 2 hereof, the City is authorized to issue water revenue and refunding bonds of the City, pursuant to Section 10-142 and Sections 18-1803 to 18-1805, Reissue Revised Statutes of Nebraska, as amended, in the aggregate principal amount of \$1,415,000. That under the terms of Ordinance No. 969 authorizing the Series 2004 Bond, the City may issue Additional Bonds of equal standing under the terms of Section 16 of such ordinance so long as the "Net Revenues" (as defined in Ordinance No. 969 and in this Ordinance have been at least 1.25 times the "Average Annual Debt Service Requirements" of the Series 2004 Bond and the bonds herein authorized as "Additional Bonds". Such Net Revenues are hereby determined to be not less than \$341,133.00 and such Average Annual Debt Service Requirements are hereby determined to be not more than \$180,689.19.

Section 3. In addition to the definitions provided in parentheses elsewhere in this Ordinance, the following definitions of terms shall apply, unless the context shall clearly indicate otherwise:

(a) the term "revenues" shall mean all of the rates, rentals, fees and charges, earnings and other monies, including investment income, from any source derived by the City of David City, Nebraska, through its ownership and operation of the Water System.

(b) the term "Additional Bonds" shall mean any and all bonds hereafter issued by the City pursuant to the terms of this Ordinance which are equal in lien to the Series 2008 Bonds and the Series 2004 Bond, including all such bonds issued pursuant to Section 15 of this Ordinance.

(c) the term "Average Annual Debt Service Requirements" shall mean that number computed by adding all of the principal and interest due when computed to the absolute maturity of the bonds for which such computation is required and dividing by the number of years remaining that the longest bond of any issue for which such computation is required has to run to maturity. In making such computation, the principal of any bonds for which mandatory redemptions are scheduled shall be treated as maturing in accordance with such schedule of mandatory redemptions.

(d) the term "Deposit Securities" shall mean obligations of the United States of America, direct or unconditionally guaranteed, including any such obligations issued in book entry form.

(e) the term "Net Revenues" shall mean the revenues derived by the City from the ownership or operation of the Water System, including investment income, but not including any income from the sale or other disposition of any property belonging to or forming a part of the Water System, less the ordinary expenses for operating and maintaining the Water System payable from the Operation and Maintenance Account described in Section 16 of this Ordinance. Operation and Maintenance expenses for purposes of determining "Net Revenues" shall not include depreciation, amortization of financing expenses or interest on any bonds or other indebtedness. Net Revenues for all purposes of this Ordinance shall be shown by an audit for the fiscal year in question as conducted by an independent certified public accountant or firm of such accountants.

(f) the term "Paying Agent and Registrar" shall mean Treasurer of the City of David City, David City, Nebraska, as appointed to act as paying agent and registrar for the Series 2008 Bonds pursuant to Section 7 hereof, or any successor thereto.

Section 4. To provide, together with cash available therefor, for the refunding of the Outstanding Bonds as described in Section 1 hereof, to pay the costs of improvements as set out in Section 2, hereof, and to pay the costs of issuance and underwriting hereof, including establishment of debt service reserve funds as hereunder provided, there shall be and there are hereby ordered issued negotiable bonds of the City of David City, Nebraska, to be designated as "Water Revenue and Refunding Bonds, Series 2008" (the "Series 2008 Bonds") in the aggregate principal amount of One Million Four Hundred Fifteen Thousand Dollars (\$1,415,000), with said bonds being allocated to the purposes of this Ordinance and bearing interest at the rates per annum and to become due on August 1 of the year as indicated below:

<u>Refunding Bonds</u>	<u>Principal Amount</u>		<u>Total</u>	<u>Maturing August 1</u>	<u>Interest Rate</u>
		<u>New Money</u>			
\$109,000		\$26,000	\$135,000	2010	2.60%
116,000		54,000	170,000	2012	3.25
63,000		27,000	90,000	2013	4.45
62,000		38,000	100,000	2014	3.70
67,000		33,000	100,000	2015	3.85
72,000		28,000	100,000	2016	4.00
71,000		29,000	100,000	2017	4.15
70,000		35,000	105,000	2018	4.30
67,000		48,000	115,000	2019	4.45
66,000		54,000	120,000	2020	4.60
		125,000	125,000	2021	4.70
		125,000	155,000	2022	4.75

Provided, however, the Bonds shall be subject to mandatory sinking fund redemption payments as follows:

\$135,000 Principal Amount Maturing August 1, 2010

\$55,000 To Be Called August 1, 2009

\$80,000 Payable August 1, 2010

\$170,000 Principal Amount Maturing August 1, 2012

\$85,000 To Be Called August 1, 2011

\$85,000 Payable August 1, 2012

The Series 2008 Bonds shall be issued in fully registered form in the denomination of \$5,000 or any integral multiple thereof. The date of original issue of the Series 2008 Bonds shall be August 15, 2008. Interest on the Series 2008 Bonds, at the respective rate for each maturity, shall be payable beginning February 1, 2009, and semiannually thereafter on February 1 and August 1 of each year (each an "Interest Payment date"), and the Series 2008 Bonds shall bear such interest from the date of original issue or the most recent Interest Payment Date, whichever is later. Interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The interest due on each Interest Payment Date shall be payable to the registered owners of record as of the fifteenth day immediately preceding the Interest Payment Date (the "Record Date"), subject to the provisions of Section 7 hereof. The Series 2008 Bonds shall be numbered from 1 upwards in the order of their issuance. No 2008 Bond shall be issued originally or upon transfer or partial redemption having more than one principal maturity. The initial bond numbering and principal amounts for each of the Series 2008 Bonds issued shall be as directed by the initial purchaser thereof. Payments of interest due on the Series 2008 Bonds prior to maturity or earlier redemption shall be made by the Paying Agent and Registrar as designated pursuant to Section 6 hereof, by mailing a check or draft in the amount due for such interest on each Interest Payment Date to the registered owner of each 2008 Bond, as of the Record Date for such Interest Payment Date, to such owner's registered address as shown on the books of registration as required to be maintained in Section 6 hereof. Payments of principal due at maturity or at any date fixed for redemption prior to maturity together with any unpaid interest accrued thereon shall be made by the Paying Agent and Registrar to the registered owners upon presentation and surrender of the Series 2008 Bonds to the Paying Agent and Registrar. The City and the Paying Agent and Registrar may treat the registered owner of any Series 2008 Bond as the absolute owner of such Series 2008 Bond for the purpose of making payments thereon and for all other purposes and neither the City nor the Paying Agent and Registrar shall be affected by any notice or knowledge to the contrary whether such Series 2008 Bond or any installment of interest due thereon shall be overdue or not. All payments on account of interest or principal made to the registered owner of any Series 2008 Bond in accordance with the terms of this Ordinance shall be valid and effectual and shall be a discharge of the City and the Paying Agent and Registrar, in respect of the liability upon the Series 2008 Bonds or claims for interest to the extent of the sum or sums so paid.

Section 6. The Treasurer of the City of David City, David City, Nebraska is hereby designated to serve as Paying Agent and Registrar for the Series 2008 Bonds. Said Paying Agent and Registrar shall serve in such capacities as required by this Ordinance and under such terms and conditions as shall be established by the Mayor and City Clerk, but with such changes as they shall deem appropriate or necessary. The Paying Agent and Registrar shall keep and maintain for the City books for the registration and transfer of the Series 2008 Bonds at the City's offices in David City, Nebraska. The names and registered addresses of the registered owner or owners of the Series 2008 Bonds shall at all times be recorded in such books. Any Series 2008 Bond may be transferred pursuant to its provisions at the office of said Paying Agent and Registrar by surrender of such Series 2008 Bond for cancellation, accompanied by a written instrument of transfer, in form satisfactory to said Paying Agent and Registrar, duly executed by the registered owner in person or by such owner's duly authorized agent, and thereupon the Paying Agent and

Registrar, on behalf of the City, will deliver at its office (or send by registered mail to the transferee owner or owners thereof at such transferee owner's or owners' risk and expense), registered in the name of the transferee owner or owners, a new 2008 Bond or 2008 Bonds of the same series, interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the Series 2008 Bonds by this Ordinance, one 2008 Bond may be transferred for several such Series 2008 Bonds of the same series, interest rate and maturity, and for a like aggregate principal amount, and several such Series 2008 Bonds may be transferred for one or several such Series 2008 Bonds, respectively, of the same series, interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a 2008 Bond, the surrendered 2008 Bond shall be canceled and destroyed. All 2008 Bonds issued upon transfer of the bonds so surrendered shall be valid obligations of the City evidencing the same obligation as the Series 2008 Bonds surrendered and shall be entitled to all the benefits and protection of this Ordinance to the same extent as the Series 2008 Bonds upon transfer of which they were delivered. The City and said Paying Agent and Registrar shall not be required to transfer any Series 2008 Bond during any period from any Record Date until its immediately following Interest Payment Date or to transfer any Series 2008 Bond called for redemption for a period of 30 days next preceding the date fixed for redemption.

Section 7. In the event that payments of interest due on the Series 2008 Bonds on an Interest Payment Date are not timely made, such interest shall cease to be payable to the registered owners as of the Record Date for such Interest Payment Date and shall be payable to the registered owners of the Series 2008 Bonds as of a special date of record for payment of such defaulted interest as shall be designated by the Paying Agent and Registrar whenever monies for the purpose of paying such defaulted interest become available.

Section 8. In addition to the mandatory sinking fund redemption, the Series 2008 Bonds maturing on or after August 1, 2014 shall be subject to redemption, in whole or in part, prior to maturity on, August 15, 2013, or at any time thereafter, at the principal amount thereof together with accrued interest on the principal amount redeemed to the date fixed for redemption. Such optional redemption shall be made from time to time as shall be directed by the Mayor and Council of the City. The City may select the Series 2008 Bonds for optional redemption in its sole discretion. The Series 2008 Bonds shall be redeemed only in amounts of \$5,000 or integral multiples thereof. Any Series 2008 Bond redeemed in part only shall be surrendered to said Paying Agent and Registrar in exchange for a new 2008 Bond evidencing the unredeemed principal thereof. Notice of redemption of any Series 2008 Bond called for redemption shall be given, in the case of optional redemption at the direction of the City and in the case of mandatory redemption without further direction, by said Paying Agent and Registrar by mail not less than 30 days prior to the date fixed for redemption, first class, postage prepaid, sent to the registered owner of such Series 2008 Bond at said owner's registered address. Such notice shall designate the Series 2008 Bond or 2008 Bonds to be redeemed by maturity or otherwise, the date of original issue and the date fixed for redemption and shall state that such Series 2008 Bond or 2008 Bonds are to be presented for prepayment at the office of said Paying Agent and Registrar. In case of any Series 2008 Bond partially redeemed, such notice shall specify the portion of the principal amount of such Series 2008 Bond to be redeemed. No defect in the mailing of notice for any Series 2008 Bond shall affect the sufficiency of the proceedings of the City designating the Series 2008 Bonds called for redemption or the effectiveness of such call for the Series 2008 Bonds for which notice by mail has been properly given and the City shall have the right to direct further notice of redemption for any such Series 2008 Bond for which defective notice has been given.

Section 9. If the date for payment of the principal or interest on the Series 2008 Bonds shall be a Saturday, Sunday, legal holiday or a day on which the banking institutions in the

City of David City, Nebraska, are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such date shall have the same force and effect as if made on the nominal date of payment.

Section 10. The Series 2008 Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA
STATE OF NEBRASKA
COUNTY OF BUTLER

CITY OF DAVID CITY

WATER REVENUE AND REFUNDING BOND
SERIES 2008

No. _____ \$ _____

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
____%	August 1,	August 15, 2008	

Registered Owner:

Principal Amount:

KNOW ALL PERSONS BY THESE PRESENTS: That the City of David City, in the County of Butler, in the State of Nebraska, hereby acknowledges itself to owe and for value received promises to pay, but only from the special sources hereinafter described, to the registered owner specified above, or registered assigns, the principal amount specified above in lawful money of the United States of America on the date of maturity specified above with interest thereon to maturity (or earlier redemption) from the date of original issue or most recent Interest Payment Date, whichever is later, at the rate per annum specified above, payable beginning February 1, 2009, and semiannually thereafter on February 1 and August 1 of each year (each, an "Interest Payment Date"). Such interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The principal of this bond together with interest thereon unpaid and accrued at maturity (or earlier redemption) is payable upon presentation and surrender of this bond at the office of the Treasurer of the City of David City, David City, Nebraska, as Paying Agent and Registrar. Interest on this bond due prior to maturity or earlier redemption will be paid on each Interest Payment Date by a check or draft mailed by the Paying Agent and Registrar to the registered owner of this bond, as shown on the books of record maintained by the Paying Agent and Registrar, at the close of business on the fifteenth day immediately preceding the Interest Payment Date, to such owner's address as shown on such books and records. Any interest not so timely paid shall cease to be payable to the person entitled thereto as of the record date such interest was payable, and shall be payable to the person who is the registered owner of this bond (or of one or more predecessor bonds hereto) on such special record date for payment of such defaulted interest as shall be fixed by the Paying Agent and Registrar whenever monies for such purpose become available.

Bonds of this issue are subject to call for redemption through application of a mandatory sinking fund payment, said bonds being callable by lot in the amount and on the dates as set out below at par plus accrued interest to the date of such call:

\$135,000 Principal Amount Maturing August 1, 2010
\$55,000 To Be Called August 1, 2009
\$80,000 Payable August 1, 2010

\$170,000 Principal Amount Maturing August 1, 2012
\$85,000 To Be Called August 1, 2011
\$85,000 Payable August 1, 2012

This bond is one of an issue of fully registered bonds of the total principal amount of One Million Four Hundred Fifteen Thousand Dollars (\$1,415,000) of even date and like tenor, except as to the date of maturity, rate of interest and denomination (the "Series 2008 Bonds"), which were issued by the City for the purpose of refunding together with cash available therefor, the City's previously issued and outstanding Water Revenue Refunding Bonds, Series 2003, date of original issue – October 1, 2003, of the remaining outstanding and unpaid principal amount of \$755,000, to pay costs of construction of certain water system improvements, to provide for certain reserve funds, and to pay costs of issuance thereof, and is issued pursuant to the terms of an ordinance (the "Ordinance") passed and approved by the Mayor and Council of said City in accordance with and under the provisions of Sections 10-142 and Sections 18-1803 to 18-1805, Reissue Revised Statutes of Nebraska, as amended and other applicable Statutes.

In addition to the above described mandatory sinking fund payments, Bonds of said issue maturing on or after August 1, 2014, are subject to redemption at the option of the City, in whole or in part, on August 15, 2013, or at any time thereafter, at the principal amount thereof together with accrued interest on the principal amount redeemed to the date fixed for redemption. Such redemption shall be made from time to time as shall be directed by the Mayor and Council of the City. The City may select the Series 2008 Bonds for redemption in its sole discretion. Notice of redemption shall be given by mail to the registered owner of any Series 2008 Bond called for redemption in the manner specified in the Ordinance authorizing said issue of bonds. Individual bonds may be redeemed in part but only in the amount of \$5,000 or integral multiples thereof.

This bond is transferable by the registered owner or such owner's attorney duly authorized in writing at the office of the Paying Agent and Registrar upon surrender and cancellation of this bond, and thereupon a new bond or bonds of the same aggregate principal amount, interest rate and maturity will be issued to the transferee as provided in the Ordinance, subject to the limitations therein prescribed. The City, the Paying Agent and Registrar and any other person may treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment due hereunder and for all other purposes and shall not be affected by any notice to the contrary, whether this bond be overdue or not.

If the day for payment of the principal or interest on this bond shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the City of David City, Nebraska, are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such date shall have the same force and effect as if made on the nominal date of payment.

The revenues and earnings of the Water System of the City, including all improvements and additions thereto hereafter constructed or acquired (the "Water System"), are pledged and hypothecated by the City for the payment of this bond and the other Series 2008

Bonds, for the payment of the City's outstanding Water Revenue Bond, Series 2004, (as issued to the Nebraska Department of Environmental Quality, the "Series 2004 Bond") and for the payment of any additional bonds of equal priority issued in accordance with the terms of the Ordinance authorizing the Series 2008 Bonds. The Series 2008 Bonds are a lien only upon said revenues and earnings and are not general obligations of the City of David City, Nebraska.

The Ordinance authorizing the Series 2008 Bonds sets forth the covenants and obligations of the City with respect to the Water System and the applications of the revenues and earnings thereof, which revenues and earnings under the terms of the Ordinance are required to be deposited to the "David City Water Fund" as described in the Ordinance and disbursed to pay costs of operation and maintenance of the Water System, make payments of principal and interest on the Series 2008 Bonds, the Series 2004 Bond and any additional bonds of equal priority with said Series 2008 Bonds and Series 2004 Bond and other payments as specified in the Ordinance authorizing the Series 2008 Bonds. The Ordinance authorizing the Series 2008 Bonds also designate the terms and conditions under which additional bonds of equal priority with the Series 2008 Bonds and the Series 2004 Bond may be issued. The Ordinance also designates the terms and conditions upon which this bond shall cease to be entitled to any lien, benefit or security under the Ordinance and all covenants, agreements and obligations of the City under the Ordinance may be discharged and satisfied at or prior to the maturity or redemption of this bond if monies or certain specified securities shall have been deposited with a trustee bank. In the Ordinance authorizing the Series 2008 Bonds, the City also reserves the right to issue bonds or notes junior in lien to the Series 2008 Bonds, the Series 2004 Bond and any additional bonds of equal priority to the Series 2008 Bonds and the Series 2004 Bond, the principal and interest of which shall be payable from monies in the "Surplus Account" of the David City Water Fund as described in the Ordinance authorizing the Series 2008 Bonds.

IT IS HEREBY CERTIFIED AND WARRANTED that all conditions, acts and things required by law to exist or to be done precedent to and in the issuance of this bond did exist, did happen and were done and performed in regular and due form and time as provided by law.

AS PROVIDED IN THE ORDINANCE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE ORDINANCE, "DTC"), AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE ORDINANCE TO THE CONTRARY, A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE REGISTRAR. DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS BOND MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE ORDINANCE.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE REGISTRAR FOR PAYMENT OF PRINCIPAL, AND ANY BOND ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREFOR IS REGISTERED IN THE NAME OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, DTC OR ITS NOMINEE, HAS AN INTEREST HEREIN.

This bond shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar.

IN WITNESS WHEREOF, the Mayor and Council of the City of David City, Nebraska, have caused this bond to be executed on behalf of the City with the manual or the facsimile signatures of the Mayor and City Clerk of the City and by causing the official seal of the City to be imprinted hereon or affixed hereto, all as of the Date of Original Issue shown above.

ATTEST:

CITY OF DAVID CITY, NEBRASKA
(facsimile signature)
Mayor

(facsimile signature)
City Clerk

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds authorized by Ordinance passed and approved by the Mayor and Council of the City of David City, Nebraska, as described in said bond.

TREASURER OF THE CITY OF DAVID CITY,
DAVID CITY, NEBRASKA
as Paying Agent and Registrar

Authorized Signature

(FORM OF ASSIGNMENT)

For value received _____ hereby sells, assigns, and transfers unto _____ the within bond and hereby irrevocably constitutes and appoints _____, Attorney, to transfer the same on the books of registration in the office of the within mentioned Paying Agent and Registrar with full power of substitution in the premises.

Date: _____

Registered Owner

Signature Guaranteed

By: _____

Authorized Officer

Note: The signature(s) on this assignment MUST CORRESPOND with the name(s) as written on the face of the within bond in every particular, without alteration, enlargement or any change whatsoever, and must be guaranteed by a commercial bank or a trust company or by a firm having membership on the New York, Midwest or other stock exchange.

Section 11. Each of the Series 2008 Bonds shall be executed on behalf of the City with the manual or facsimile signatures of the Mayor and City Clerk of the City. The Series 2008 Bonds shall be issued initially as "book-entry-only" bonds using the services of The Depository Trust Company (the "Depository"), with one typewritten bond per maturity being issued to the Depository. In such connection said officers are authorized to execute and deliver a letter of representations (the "Letter of Representations") in the form required by the Depository, for and on behalf of the City, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the Bonds. Upon the issuance of the Bonds as "book-entry-only" bonds, the following provisions shall apply:

(a) The City and the Paying Agent and Registrar shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which the Depository holds 2008 Bonds as securities depository (each, a "Bond Participant") or to any person who is an actual purchaser of a 2008 Bond from a Bond Participant while the Series 2008 Bonds are in book-entry form (each, a "Beneficial Owner") with respect to the following:

(i) the accuracy of the records of the Depository, any nominees of the Depository or any Bond Participant with respect to any ownership interest in the Series 2008 Bonds,

(ii) the delivery to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Series 2008 Bonds, including any notice of redemption, or

(iii) the payment to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the Series 2008 Bonds. The Paying Agent and Registrar shall make payments with respect to the Series 2008 Bonds only to or upon the order of the Depository or its nominee, and all such payments shall be valid and effective fully to satisfy and discharge the obligations with respect to such Series 2008 Bonds to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated 2008 Bond, except as provided in (e) below.

(b) Upon receipt by the Paying Agent and Registrar of written notice from the Depository to the effect that the Depository is unable or unwilling to discharge its responsibilities, the Paying Agent and Registrar shall issue, transfer and exchange 2008 Bonds requested by the Depository in appropriate amounts. Whenever the Depository requests the Paying Agent and Registrar to do so, the Paying Agent and Registrar will cooperate with the Depository in taking appropriate action after reasonable notice (i) to arrange, with the prior written consent of the City, for a substitute depository willing and able upon reasonable and customary terms to maintain custody of the Series 2008 Bonds or (ii) to make available 2008 Bonds registered in whatever name or names the Beneficial Owners transferring or exchanging such Series 2008 Bonds shall designate.

(c) If the City determines that it is desirable that certificates representing the Series 2008 Bonds be delivered to the Bond Participants and/or Beneficial Owners of the Series 2008 Bonds and so notifies the Paying Agent and Registrar in writing, the Paying Agent and Registrar shall so notify the Depository,

whereupon the Depository will notify the Bond Participants of the availability through the Depository of bond certificates representing the Series 2008 Bonds. In such event, the Paying Agent and Registrar shall issue, transfer and exchange bond certificates representing the Series 2008 Bonds as requested by the Depository in appropriate amounts and in authorized denominations.

(d) Notwithstanding any other provision of this Ordinance to the contrary, so long as any Series 2008 Bond is registered in the name of the Depository or any nominee thereof, all payments with respect to such Series 2008 Bond and all notices with respect to such Series 2008 Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the Series 2008 Bonds may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the Series 2008 Bonds may be delivered in physical form to the following:

(i) any successor securities depository or its nominee;

(ii) any person, upon (A) the resignation of the Depository from its functions as depository or (B) termination of the use of the Depository pursuant to this Section.

(f) In the event of any partial redemption of a 2008 Bond unless and until such partially redeemed Bond has been replaced in accordance with the provisions of this Ordinance, the books and records of the Paying Agent and Registrar shall govern and establish the principal amount of such Series 2008 Bond as is then outstanding and all of the Series 2008 Bonds issued to the Depository or its nominee shall contain a legend to such effect.

If for any reason the Depository resigns and is not replaced or upon termination by the City of book-entry-only form, the City shall immediately provide a supply of bond certificates for issuance upon subsequent transfers or in the event of partial redemption. In the event that such supply of certificates shall be insufficient to meet the requirements of the Paying Agent and Registrar for issuance of replacement bond certificates upon transfer or partial redemption, the City agrees to order printed an additional supply of bond certificates and to direct their execution by manual or facsimile signature of its then duly qualified and acting officers. In case any officer whose signature or facsimile thereof shall appear on any Series 2008 Bond shall cease to be such officer before the delivery of such Series 2008 Bond (including any bond certificates delivered to the Paying Agent and Registrar for issuance upon transfer or partial redemption), such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of such Series 2008 Bond. The Series 2008 Bonds shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The Series 2008 Bonds shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration and authentication of the Series 2008 Bonds, they shall be delivered to the City's Treasurer, acting on behalf of the City, who is authorized to deliver them to D.A. Davidson & Co., as initial purchaser thereof, upon receipt of the purchase price of 98.65% of the principal amount thereof plus accrued interest on the principal amount of the Series 2008 Bonds to date of payment for the Series 2008 Bonds. Said initial purchasers shall have the right to direct the registration of the Series 2008 Bonds and the denominations thereof within each maturity, subject to the restrictions of this Ordinance. Such purchaser and its agents, representatives and counsel (including its bond counsel) are hereby authorized to take such actions on behalf of the City as are necessary to effectuate the closing of the issuance and sale of the Series 2008 Bonds, including without limitation, authorizing the

release of the Series 2008 Bonds by the Depository at closing. The City Clerk, acting on behalf of the City, shall make and certify a transcript of the proceedings of the governing body with respect to the Series 2008 Bonds which shall be delivered to said purchaser.

Section 12. For the payment of the Series 2008 Bonds and the Series 2004 Bond, both principal and interest, together with any Additional Bonds, both principal and interest, the City hereby pledges and hypothecates the entire revenues and earnings of the Water System of the City as a first and prior pledge and encumbrance of such revenues, in accordance with the terms of this Ordinance. The pledge and hypothecation provided for the Series 2008 Bonds and the Series 2004 Bond in this Ordinance is intended to and shall provide for a first and prior pledge or lien upon and security interest in the revenues of the Water System superior to any pledge, lien or security interest made or given with respect to any other indebtedness of the City as to its Water System and is intended as a full exercise of the powers of the City provided for in Sections 18-1803 to 18-1805, R.R.S. Neb. 1997, as now or hereafter amended, with respect to the City's Water System and the revenues and earnings thereof.

Section 13. The City hereby agrees that it will impose and maintain and shall revise from time to time when necessary and shall collect such rentals, rates, fees and charges for the use and services of the Water System which in the aggregate shall be sufficient at all times to enable the City to pay the principal and interest on the Series 2008 Bonds, the Series 2004 Bond and any Additional Bonds as the same become due. So long as any of the Series 2008 Bonds, Series 2004 Bond and any Additional Bonds issued pursuant to this Ordinance shall remain outstanding and unpaid, the City covenants and agrees to establish, revise, from time to time as necessary, and collect such rates and charges for the service furnished from the Water System adequate to produce revenues and earnings sufficient at all times:

- (a) To pay all proper and necessary costs of operation and maintenance of the Water System and to pay for the necessary and proper repairs, replacements, enlargements, extensions and improvements to the Water System.
- (b) To provide funds to pay, when due, the principal of and interest on the Series 2008 Bonds, the Series 2004 Bond and any Additional Bonds issued pursuant to this Ordinance.
- (c) To provide funds sufficient to make the credits into the Accounts and at the times and in the amounts required by Section 14 of this Ordinance.

Section 14. The revenues and earnings of the Water System (including any and all additions and improvements thereto hereafter acquired) are hereby pledged and hypothecated for the payment of the Series 2008 Bonds, the Series 2004 Bond and any Additional Bonds as authorized by this Ordinance and interest on such Series 2008 Bonds, Series 2004 Bond and Additional Bonds and the City does hereby agree with the holders of said 2008 Bonds as follows:

- (a) **DAVID CITY WATER FUND** - The entire gross revenues and income derived from the operation of the Water System shall be set aside as collected and deposited in a separate fund which is hereby ordered established to be designated as the "David City Water Fund" (sometimes referred to in this Ordinance as the "Water Fund"). For purposes of allocating the monies in the David City Water Fund, the City shall maintain the following accounts: (1) Operation and Maintenance Account; (2) Bond Payment Account; (3) 2008 Debt Service Reserve Account; and (4) Surplus Account.

(b) **OPERATION AND MAINTENANCE ACCOUNT** - Out of the David City Water Fund there shall be monthly credited into the Operation and Maintenance Account such amounts as the City shall from time to time determine to be necessary to pay the reasonable and necessary expenses of operating and maintaining the Water System, and the City may withdraw funds credited to the Operation and Maintenance Account as necessary from time to time to pay such expenses.

(c) **BOND PAYMENT ACCOUNT** - Out of the David City Water Fund there shall be credited monthly on or before the fifteenth day of each month to the Bond Payment Account, starting with the month of October, 2008, the following amounts:

- (1) For the period from October 1, 2008 through January 31, 2009, an amount equal to 1/4th of the next maturing semiannual interest payment on the Series 2008 Bonds, and for the period from February 1, 2009 until the Series 2008 Bonds have been paid in full, an amount equal to 1/6th of the next maturing semiannual interest payment on the Series 2008 Bonds
- (2) For the period from October 1, 2008, through July 31, 2009 an amount equal to 1/10th of the next maturing principal payment on the Series 2008 Bonds and from August 1, 2009, until the Series 2008 Bonds have been paid in full, an amount equal to 1/12th of the next maturing principal payment or next mandatory sinking fund redemption payment, as the case may be, for the Series 2008 Bonds.
- (3) For such periods and in such amounts as are required under the terms of Ordinance No. 969 with respect to the Series 2004 Bond.

The City Treasurer is hereby authorized and directed, without further authorization, to withdraw monies credited to the Bond Payment Account, or if the monies in such Account are insufficient, then from the 2008 Debt Service Reserve Account (but only with respect to the Series 2008 Bonds) and next from the Surplus Account, in an amount sufficient to pay, when due, the principal of and interest on the Series 2008 Bonds, the Series 2004 Bond or any Additional Bonds and to transfer such amounts due to the Paying Agent and Registrar (or other paying agent for Additional Bonds) or direct payee on or before each principal and interest payment date. Upon the issuance of any Additional Bonds pursuant to this Ordinance appropriate additional credits to the Bond Payment Account shall be provided sufficient to pay principal and interest on said Additional Bonds.

(d) **2008 DEBT SERVICE RESERVE ACCOUNT** - The City agrees that it shall transfer concurrently with the issuance of the Series 2008 Bonds amounts from the debt service reserve for the Series 2003 Bonds, from the proceeds of the Series 2008 Bonds or other funds of the City's Water System on hand the amount of \$141,500 as the amount required to be maintained as a debt service reserve attributable to the Series 2008 Bonds (the "2008 Reserve Requirement"). Monies credited to the 2008 Debt Service Reserve Account may be withdrawn, as needed to provide funds to pay, when due, the principal and

interest on the Series 2008 Bonds issued pursuant to this Ordinance, if the Bond Payment Account contains insufficient funds for that purpose, and the City Treasurer is hereby authorized and directed to make such withdrawal if and when needed. In the event of a withdrawal from the 2008 Debt Service Reserve Account, there shall be credited to the 2008 Debt Service Reserve Account in the month following such withdrawal all monies in the David City Water Fund remaining after making the payments required to be made in such month to the Operation and Maintenance Account and Bond Payment Account and each month thereafter all such remaining monies shall be credited to the 2008 Debt Service Reserve Account until such account has been restored to the 2008 Reserve Requirement. Upon the issuance of any Additional Bonds a separate debt service reserve account shall be established and any such separate debt service reserve account shall have the right to share, in the event of drawings upon the 2008 Debt Service Reserve Account and such reserve account for Additional Bonds, in revenues available in the David City Water Fund upon a pro rata basis in accordance with the respective outstanding principal amounts or each such issue. Under Ordinance No. 969, no reserve amount for the Series 2004 Bond has been required. Anything in this Subsection 14(d) to the contrary notwithstanding, the amount required to be maintained in the 2008 Debt Service Reserve Account with respect to the Series 2008 Bonds or in any debt service reserve account for any issue of Additional Bonds shall not be required to exceed at any time the maximum amount permitted to be invested without yield restriction under Section 103(b) and 148 of the Internal Revenue Code of 1986, as amended, and applicable regulations of the United States Treasury Department.

(e) **SURPLUS ACCOUNT** - Monies from the David City Water Fund remaining after the credits required in the foregoing Subsections 14(b), 14(c) and 14(d) shall be credited to the Surplus Account. Monies in the Surplus Account may be used to make up any deficiencies in the preceding Accounts, to retire any of the Series 2008 Bonds, the Series 2004 Bond or any Additional Bonds prior to their maturity, to pay principal of and interest on any junior lien indebtedness incurred with respect to the Water System, to provide for replacements or improvements for the Water System or to provide for any other lawful purpose of the City determined upon by the Mayor and Council.

It is understood that the revenues of the Water System are to be credited to the various accounts hereinabove described and as set out in this Ordinance in the order in which said accounts have been listed in said Ordinance, and if within any period the revenues are insufficient to credit the required amounts in any of the said accounts, the deficiencies shall be made up the following period or periods after payment into all accounts enjoying a prior claim on the revenues have been made in full. The provisions of this Section shall require the City to maintain a set of books and records in accordance with such accounting methods and procedures as are generally applicable to a municipal utility enterprise, which books and records shall show credits to and expenditures from the several Accounts required by this Section. Monies credited to the David City Water Fund or any of the Accounts therein as established by this Ordinance shall be deposited or invested separate and apart from other City funds. Except as specified below for the 2008 Debt Service Reserve Account and any reserve account for Additional Bonds, the City shall not be required to establish separate bank or investment accounts for the Accounts described in Subsection 14(b), 14(c), 14(d) and 14(e). Monies credited to the 2008 Debt Service Reserve Account or any reserve account for Additional Bonds (unless otherwise directed in their authorizing ordinance) shall, if maintained in a demand or time deposit account, be kept in a separate account and not commingled with other Water Funds or accounts. If invested, monies credited to the 2008 Debt Service Reserve Account or any reserve account established for

Additional Bonds may be commingled with other Water Funds or accounts so long as the City maintains books and records clearly identifying the specific investments, or portions thereof, which belong to the 2008 Debt Service Reserve Account or reserve account for Additional Bonds.

Section 15. To provide funds for any purpose related to the Water System, the City may issue Additional Bonds, including refunding bonds, payable from the revenues of the Water System having equal priority and on a parity with the Series 2008 Bonds, the Series 2004 Bond and any Additional Bonds then outstanding, only upon compliance with the following conditions:

(a) Such Additional Bonds shall be issued only pursuant to an ordinance which shall provide for an increase in the monthly credits into the Bond Payment Account in amounts sufficient to pay, when due, the principal of and interest on the Series 2008 Bonds, , the Series 2004 Bond, any Additional Bonds then outstanding and the proposed Additional Bonds and for a separate debt service reserve account for Additional Bonds, if deemed appropriate by the Mayor and Council, for which the required amount shall not exceed the amounts prescribed by the then current Internal Revenue Code.

(b) The City shall have complied with one or the other of the two following requirements:

- (1) The Net Revenues derived by the City from its Water System for the fiscal year next preceding the issuance of the Additional Bonds shall have been at least equal to 1.25 times the Average Annual Debt Service Requirements of the Series 2008 Bonds, the Series 2004 Bond and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds; or
- (2) The City shall have received a projection made by a consulting engineer or firm of consulting engineers, recognized as having experience and expertise in municipal utility systems, projecting that the Net Revenues of the Water System in each of the three full fiscal years after the issuance of such Additional Bonds will be at least equal to 1.25 times the Average Annual Debt Service Requirements of the Series 2008 Bonds, the Series 2004 Bond and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds. In making such projection, the consulting engineer shall use as a basis the Net Revenues of the Water System during the last year for which an independent audit has been prepared and shall adjust such Net Revenues as follows: (A) to reflect changes in rates which have gone into effect since the beginning of the year for which the audit was made, (B) to reflect such engineer's estimate of the net increase over or net decrease under the Net Revenues of the Water System for the year which the audit was made by reason of: (i) changes of amounts payable under existing contracts for service; (ii) additional general income from sales or charges to customers under existing rate schedules for various classes of customers or as such schedules may be revised under a program of changes which has been adopted by the Mayor and Council

of the City; (iii) projected revisions in costs for labor, wages, salaries, machinery, equipment, supplies and other operational items; (iv) revisions in the amount of service to be supplied and any related administrative or other costs associated with such increases due to increased supply from the acquisition of any new facility; and (v) such other factors affecting the projections or revenues and expenses as the consulting engineer deems reasonable and proper. Annual debt service on any proposed Additional Bonds to be issued may be estimated by the consulting engineer in projecting Average Annual Debt Service Requirements, but no Additional Bonds shall be issued requiring any annual debt service payment in excess of the amount so estimated by the consulting engineer.

If the City shall find it desirable, it shall also have the right when issuing Additional Bonds to combine with its Water System any other utilities of the City authorized to be combined under Sections 18-1803 through 18-1805, Reissue Revised Statutes of Nebraska, as amended, including, but not limited to, an electric system, a sanitary sewer system, a municipal gas system, a solid waste disposal system or such other system as may constitute a revenue producing undertaking, and to cause all of the revenues of such systems to be paid into the David City Water Fund, which fund may be appropriately redesignated, and to provide that all of the Series 2008 Bonds, Series 2004 Bond (with the written consent of the holder thereof) and any Additional Bonds previously issued, all as then outstanding, and the proposed issue of Additional Bonds shall be payable from the revenues of such Water System and such other utility or utilities and shall stand on a parity and in equality as to security and payment, provided, however, no such utility shall be combined with the Water System as contemplated in this paragraph unless the City is current with all the payments required to be made into the accounts set out in this Ordinance and the revenues of the Water System and such other combined utility or utilities shall satisfy one or the other of the requirements for Additional Bonds provided above in this Section 15. For purposes of meeting such requirement, the definition of "Net Revenues" shall be altered to include the gross revenues of the additional utility or utilities and there shall be deducted from such revenues the ordinary expenses of operating and maintaining the additional utility or utilities (not including any deduction for depreciation or interest) and for such purposes any engineer or accountant furnishing projections may take into consideration the factors similar to those described in this Section 15 above with respect to such additional utility or utilities. Revenues of the additional utility or utilities shall be based upon the report or reports of independent certified public accountants in the same manner as is required above.

For purposes of this Ordinance, refunding bonds, which are issued to take up and pay off any or all of the Series 2008 Bonds, Series 2004 Bond or Additional Bonds then outstanding may be issued and shall themselves qualify as Additional Bonds having equal lien and priority as to the revenues of the Water System with any of the Series 2008 Bonds, Series 2004 Bond or Additional Bonds which are to remain outstanding after the completion of such refunding provided that the following conditions are met:

- (1) if the proceeds of such refunding bonds are not to be applied immediately to the taking up and paying off of the bonds to be refunded from their proceeds, then such refunding bonds must provide by their terms that they shall be junior in lien to all such Series 2008 Bonds, Series 2004 Bond or Additional Bonds, as shall be then outstanding, until the time of application of the proceeds of such refunding bonds to the taking up and paying off of the bonds to be refunded by deposit with the designated paying agent pursuant to Section 10-126, Reissue Revised Statutes of Nebraska, as

amended (or any successor statutory provision thereto) or until the bonds to be refunded under the terms of their authorizing ordinance or ordinances are no longer deemed to be outstanding, whichever occurs sooner;

(2) such refunding bonds shall qualify as Additional Bonds under the revenues test described above in this Section 15, provided that in computing Average Annual Debt Service Requirements, all payments of principal and interest due on such refunding bonds from the time of their issuance to the time of application of the proceeds thereof by deposit with the designated paying agent pursuant to Section 10-126, Reissue Revised Statutes of Nebraska, as amended (or any successor statutory provision thereto) or until the bonds to be refunded under the terms of their authorizing ordinance or ordinances are no longer deemed to be outstanding, whichever occurs sooner, shall be excluded from such computation to the extent that such principal or interest are payable from other sources (such as bond proceeds or investment earnings thereon) or from moneys in the Surplus Account, and all payments of principal and interest due on the bonds to be refunded, from and after the time of the deposit with the designated paying agent pursuant to Section 10-126 Reissue Revised Statutes of Nebraska, as amended (or any successor statutory provision thereto) or the time when such bonds to be refunded under the terms of their authorizing ordinance or ordinances are no longer deemed to be outstanding, whichever occurs sooner, shall also be excluded from such computation.

The City hereby covenants and agrees that so long as any of the Series 2008 Bonds, the Series 2004 Bond and any Additional Bonds are outstanding, it will not issue any bonds or notes payable from the revenues of the Water System except in accordance with the provisions of this Ordinance, provided, however, the City reserves the right to issue bonds or notes which are junior in lien to the Series 2008 Bonds, the Series 2004 Bond and any such Additional Bonds with the principal and interest on such bonds or notes to be payable from monies credited to the Surplus Account as provided in Subsection 14(e).

Section 16. Moneys on deposit in the David City Water Fund shall be invested in such obligations as are permitted by law for cities of the class to which the City belongs, maturing at such times not later than ten years from the date of such investment and in such amounts as shall be determined by the City. Earnings from the investment of such moneys shall not be credited to the particular fund, account or sub-account from which the investment was made, but shall be treated as earnings of the Water System and shall be treated as any other revenues of the system. All investments held for the credit of any Fund or Account may be sold when required to make the payments to be made from such Fund or Account. Any moneys credited to the Water Fund or any Account therein which are not invested shall be secured in the manner provided by law for the security of funds of cities of the class to which the City of David City belongs.

Section 17. The City of David City shall keep proper books of record and account, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Water System and the holders of any of the Series 2008 Bonds or any duly authorized agent or agents of such holders shall have the right at all reasonable times to inspect all records, accounts and data relating thereto and to inspect the Water System and all properties comprising the same. Within ninety days following the close of each fiscal year the City shall cause an audit of such books and accounts to be commenced by an independent firm of certified public accountants, showing the receipts and disbursements for account of the Water System, and such audit, as soon as it is complete, shall be available for inspection by the holders of any of the aforesaid bonds. Each such audit, in addition to whatever matters may be thought proper by the accountant to be included therein, shall include the following:

1. A statement in detail of the income and expenditures of each component of the Water System for such fiscal year.
2. A balance sheet as of the end of such fiscal year.

All expenses incurred in the making of the audits required by this section shall be regarded and paid as a maintenance and operation expense. The City shall furnish a copy of each such audit to D.A. Davidson & Co., as the original purchaser of the Series 2008 Bonds and to the holder of at least twenty-five percent (25%) of any issue of bonds outstanding, upon request, after the close of each fiscal year, and said purchasers or any such holder shall have the right to discuss with the accountant making the audit the contents of the audit and to ask for such additional information as each may require.

Section 18. The City Treasurer shall be bonded, in addition to said Treasurer's official bond, by an insurance company licensed to do business in Nebraska, in an amount sufficient to cover at all times all the revenues and earnings of the Water System placed in said Treasurer's hands. Any other person employed by the City in the collection or handling of moneys derived from the operation of the Water System shall also be bonded in an amount sufficient to cover all moneys which may at any time be placed in his or her hands. The amount of such bonds shall be fixed by the Council and the cost thereof shall be paid from the earnings of said Water System, and such bonds shall secure the faithful accounting of all moneys.

Section 19. The City will carry adequate insurance on the Water System in such amounts as are normally carried by private companies engaged in similar operations, including, without limiting the generality of the foregoing, fire and windstorm insurance, public liability insurance and any insurance covering such risks as shall be recommended by a consulting engineer. The cost of all such insurance shall be regarded and paid as an operation and maintenance expense.

All insurance moneys, except from public liability insurance, shall be deposited in the Surplus Account and shall be used in making good the loss or damage in respect of which they were paid either by repairing the property damaged or replacing the property destroyed, and expenditures from said moneys shall be made only upon a certificate issued by a consulting engineer and filed with the City Clerk stating that the proceeds, together with any other moneys available for such purposes, are sufficient for the repair or replacement of any such properties; and when the City shall have been furnished with a certificate of a consulting engineer stating that the property damaged or destroyed has been fully repaired or replaced and such repairs or replacements have been fully paid for, the residue, if any, of such insurance moneys shall be transferred from the Surplus Account to the Water System Revenue Bond Account to make up any deficiency in said account, if any such deficiency exists.

If the proceeds of any insurance shall be insufficient to repair or replace the property damaged or destroyed, the City may use and shall pay out for such purpose, to the extent of such deficiency, any money remaining in the Surplus Account.

The proceeds of any and all policies for public liability shall be paid to and be held by the City Treasurer and used in paying the claims on account of which they were received.

Section 20. The City will maintain the Water System in good condition and operate the same in an efficient manner and at a reasonable cost. The City agrees with the holders from time to time of the Series 2008 Bonds and any Additional Bonds that the City will continue to own, free from all liens and encumbrances, except the liens and pledges provided for herein and will adequately maintain and efficiently operate said Water System; provided, however, the City may

sell for cash, property which is recommended to be sold by the manager or superintendent of utilities, or an independent Consulting Engineer and which is determined as a matter of record by the Council to have become obsolete, non-productive or otherwise unusable to the advantage of the City.

Section 21. The City will not hereafter grant any franchise or right to any person, firm or corporation to own or operate a Water System plant or system in competition with that owned by the City.

Section 22. While any of the Series 2008 Bonds are outstanding, the City will render bills to all customers for Water System services. If bills are not paid within sixty days after due, such utility service will be discontinued, as and to the extent permitted by law. The City agrees that it will order Water System service shut off on all properties served by Water System service where there are delinquent Water System service use charges and will make appropriate charge for use of all properties of the City connected to the Water System, all as and to the extent permitted by law.

Section 23. Except for amendments which are required for the correction of language to cure any ambiguity or defective or inconsistent provisions, omission or mistake or manifest error contained herein, no changes, additions or alterations of any kind shall be made by the City in the provisions of this Ordinance in any manner; provided, however, that from time to time the holders of sixty percent (60%) in principal amount of the Series 2008 Bonds outstanding hereunder (not including any of said bonds credited to any of the Accounts described in this Ordinance or any other of said bonds owned or controlled directly or indirectly by the City) by an instrument or instruments in writing signed by such holders and filed with the City Clerk shall have the power to assent to and authorize any modification of the rights and obligations of the City and of the holders of the said bonds and the provisions of this Ordinance that shall be proposed by the City, and any action authorized to be taken with the assent and authority given as aforesaid of the holders of sixty percent (60%) in principal amount of said bonds at the time outstanding hereunder shall be binding upon the holders of said Series 2008 Bonds then outstanding and upon the City as fully as though such action were specifically and expressly authorized by the terms of this Ordinance; provided, always, that no such modification shall be made which will (a) extend the time of payment of the principal of or interest on any of said bonds or reduce the principal amount thereof or the rate of interest thereon; or (b) give to any of said bonds secured by this Ordinance any preference over any other of said bond or bonds; or (c) authorize the creation of any lien prior to the pledge of the revenues afforded by this Ordinance, for the Series 2008 Bonds, the Series 2004 Bond and Additional Bonds; or (d) reduce the percentage in principal amount of said Series 2008 Bonds required to assent to or authorize any such modification. Any modification of the provisions of this Ordinance made as aforesaid shall be set forth in a supplemental ordinance to be adopted by the Mayor and Council of the City.

Section 24. So long as any of the Series 2008 Bonds, Series 2004 Bond or any Additional Bonds of equal lien are outstanding, each of the obligations, duties, limitations and restraints imposed upon the City by this Ordinance shall be deemed to be a covenant between the City and every holder of said bonds, and this Ordinance and every provision and covenant hereof shall constitute a contract of the City with every holder from time to time of said bonds. Any holder of a Series 2008 Bond or Series 2008 Bonds, the Series 2004 Bond or of an Additional Bond or Bonds may by mandamus or other appropriate action or proceeding at law or in equity in any court of competent jurisdiction enforce and compel performance of this Ordinance and every provision and covenant thereof including, without limiting the generality of the foregoing, the enforcement of the performance of all duties required by the City by this Ordinance and the applicable laws of the State of Nebraska, including in such duties the making and collecting of sufficient rates, rentals, fees or charges for the use and service of the Water System, the

segregation of the revenues of said system, and the application thereof to the respective Fund, Accounts and sub-accounts referred to and described in this Ordinance. Any holder of a Series 2008 Bond, the Series 2004 Bond or Additional Bond shall, after any default in payment, have the right to request the appointment of a receiver for the Water System.

Section 25. The City's obligations under this Ordinance and the liens, pledges, dedications, covenants and agreements of the City herein made or provided for shall be fully discharged and satisfied as to any of the Series 2008 Bonds issued hereunder, and said bonds shall no longer be deemed outstanding hereunder if such bonds shall have been purchased and canceled by the City or, as to any of said bonds not theretofore purchased and canceled by the City, when payment of the principal of and any applicable redemption premium, if any, on such bonds plus interest thereon to the respective dates of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof; or (b) shall have been provided for by depositing with a state or national bank having trust powers or trust company in trust solely for such payment (i) sufficient moneys to make such payment and/or (ii) direct general obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America (herein referred to as "Government Obligations") in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to principal at such times as will ensure the availability of sufficient moneys to make such payment and such bonds shall cease to draw interest from the date fixed for their redemption or maturity and, except for the purposes of such payment, shall no longer be entitled to the benefits of this Ordinance; provided that, with respect to any such bonds called or to be called for redemption, the City shall have duly given notice of redemption or made irrevocable provision for such notice. Any such moneys so deposited with the aforesaid state or national bank or trust company as provided in this section may be invested and reinvested in Government Obligations at the direction of the City and all interest and income from all such Government Obligations in the hands of the aforesaid trustee bank or trust company which are not required to pay principal and interest on the Series 2008 Bonds for which such deposit has been made shall be paid to the City as and when realized and collected.

Section 26. In accordance with the requirements of Rule 15c2-12 (as now existing or hereafter amended, the "Rule") promulgated by the Securities and Exchange Commission, the City hereby agrees that it will provide the following continuing disclosure information:

(1) to the Underwriter and any person making request or in the alternative at least annually to any state information depository ("SID") for the State of Nebraska (no such SID currently exists or is presently expected to exist based upon any current pending legislation), any financial information and operating data which are customarily prepared by the City and publicly available, including the City's most recently prepared audited financial statements, which shall be prepared on the same basis of accounting as the City's financial statements for the fiscal year ended September 30, 2007, which basis may be a basis other than generally accepted accounting principles, subject to the City's right to change accounting methods as determined appropriate from time to time in the future.

(2) in a timely manner to the Underwriter, to the Municipal Securities Rule Making Board (the "MSRB") (as and to the extent required by the Rule), to the SID (if any) and to any nationally recognized municipal securities information repository (as and to the extent required by the Rule), notice of the occurrence of any of the following events with respect to the Bonds, if in the judgment of the City, such event is material:

- (a) principal and interest payment delinquencies,
- (b) nonpayment related defaults,

- (c) unscheduled draws on debt service reserves reflecting financial difficulties,
- (d) unscheduled draws on credit enhancements reflecting financial difficulties,
- (e) substitution of credit or liquidity providers, or their failure to perform,
- (f) adverse tax opinions or events affecting the tax-exempt status of the Series 2008 Bonds,
- (g) modifications to rights of the bondholders,
- (h) bond calls,
- (i) defeasances,
- (j) release, substitution, or sale of property securing repayment of the Series 2008 Bonds, and
- (k) rating changes.

The City does not undertake to provide notice of the occurrence of any other material event, except the events listed above. The City reserves the right to modify the type of information or the format for any such information provided pursuant to such undertaking, to the extent necessary or appropriate in the judgment of the City, so long as any such modification is consistent with the requirements of the Rule. The undertakings of the City in this Ordinance relating to continuing disclosure are hereby declared to be for the benefit of the registered owners of the Series 2008 Bonds (including beneficial owners of the Series 2008 Bonds held in nominee name, each a "Beneficial Owner") and such covenants may be enforced by the registered owner of any of the Series 2008 Bonds or by any Beneficial Owner of the Series 2008 Bonds, provided that any right to enforcement shall be limited to specific enforcement of such covenants and any failure shall not constitute an event of default under this Ordinance. The City hereby designates its City Treasurer as the contact person from whom the foregoing information, data and notices can be obtained.

Section 27. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

Section 28. All ordinances, resolutions or orders or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

Section 29. The Mayor and City Council hereby approve the Preliminary Official Statement with respect to the Series 2008 Bonds and the information therein contained, and the Mayor and City Administrator or either of them is authorized to approve and deliver a final Official Statement for and on behalf of the City, and said final Official Statement shall be delivered in accordance with the requirements of Reg. Sec. 240.15c2-12 of the Securities and Exchange Commission.

Section 30. The City hereby covenants and agrees that it will make no use of the proceeds of the Series 2008 Bonds which would cause the Series 2008 Bonds to be "arbitrage bonds" within the meaning of Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code") and further covenants to comply with said Sections 103(b)(2) and 148 and all applicable regulations thereunder throughout the term of said issue, including all requirements with respect to payment and reporting of rebates, if applicable. The City hereby covenants to take all action necessary to preserve the tax-exempt status of the interest on the Series 2008 Bonds for federal income tax purposes under the Code with respect to taxpayers generally. The City further agrees that it will not take any actions which would cause the Series 2008 Bonds to constitute "private activity bonds" within the meaning of Section 141 of the Code. The City hereby designates (to the extent not deemed designated under Section 265 of the Code)

the Series 2008 Bonds as its "qualified tax-exempt obligations" pursuant to Section 265(b)(3)(B)(i)(III) of the Code and covenants and warrants that it does not reasonably expect to issue bonds or other obligations aggregating in principal amount more than \$10,000,000 during calendar 2008. The officers of the City or any one or more of them are hereby authorized to make any such allocations and determinations as may be deemed appropriate in connection with the tax-exempt status of interest on the Series 2008 Bonds.

Section 31. This Ordinance shall be published in pamphlet form and shall be in force and effect from and after its passage as provided by law.

PASSED AND APPROVED this 13th day of August, 2008.

Mayor

ATTEST:

City Clerk

Council member Schatz made a motion to advance to agenda item #39 - Consideration of Resolution No. 21-2008 setting the date, time, and place for a Resolution of Necessity creating Storm Water Sewer District - Storm Water Sewer District No. 2008-SW2. Council member Hein seconded the motion. Voting AYE: Council members Lukassen, Scribner, Smith, Hein, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz introduced Resolution No. 21-2008 and moved for its passage and adoption. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Lukassen, Hein, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried and Resolution No. 21 - 2008 was passed and adopted as follows:

RESOLUTION NO. 21 - 2008

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

1. That the Resolution of Necessity creating Storm Water Sewer District - Storm Water Sewer District No. 2008-SW2 of the City of David City be and it is hereby proposed.
2. The time of 7:30 o'clock p.m. on the 10th day of September, 2008, at the City Office in David City, Nebraska, is hereby set as the time and place for the Mayor and Council to conduct a hearing on the adoption of said resolution and any objections to its passage, at which owners of real property located in said District

may appear and make objections to such improvement, and the City Clerk is hereby instructed to publish notice of such hearing as required by law.

PASSED AND APPROVED this 13th day of August, 2008.

Mayor Dana Trowbridge

City Clerk Joan E. Kovar

Council member Schatz made a motion to advance to agenda item #40 - Consideration of Resolution No. 22-2008 confirming the approval of the Plans, Specifications, and Estimate of Cost prepared by the City's Engineer for Storm Water Sewer District No. 2008-SW2. Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Scribner, Hein, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz introduced Resolution No. 22 - 2008 and moved for its passage and adoption. Council member Lukassen seconded the motion. Voting AYE: Council members Scribner, Hein, Smith, Lukassen, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried and Resolution No. 22 - 2008 was passed and adopted as follows:

RESOLUTION NO. 22 - 2008

RESOLUTION CONFIRMING THE APPROVAL OF THE PLANS, SPECIFICATIONS, AND ESTIMATE OF COST PREPARED BY THE CITY'S ENGINEER FOR STORM WATER SEWER DISTRICT NO. 2008-SW2.

BE IT RESOLVED by the Mayor and City Council of the City of David City, Nebraska:

That the plans, specifications and estimate of cost of \$650,000 filed by the City's Engineers, The Schemmer Associates in coordination with the Upper Big Blue Natural Resources District, in the office of the City Clerk on the 8th day of August, 2008, for the construction of Storm Water Sewer Drainage Improvements in Storm Water Sewer District No. 2008-SW2 be and the same are hereby approved and that the prior action of the Mayor and City Council in the approval of said plans, specifications, and estimate of cost and in the approval of the form of notice to contractors and publication of said notice to contractors is in all respects ratified, confirmed, and approved.

PASSED AND APPROVED this 13th day of August, 2008.

Mayor Dana Trowbridge

City Clerk Joan E. Kovar

Melissa, John, and Sally Kramar, 211 South 9th Street, requested a variance to zoning regulations for a 10' x 58' plot of city easement for the construction of a safety/privacy fence on the north side of their property, parallel with Nebraska Street, between 9th and the public alley. The Board of Zoning Adjustment cannot grant a variance for a structure on City property. It was noted that the BOZA granted a variance to 1st National Bank of Omaha for flag poles and to the Thorpe Opera House for an entrance but these were both in Downtown Commercial zoned areas where there are no set-backs. Council member Schatz stated that once a variance is granted to allow a structure on City property in a residential zoned area they are opening a can of worms. Kramar's argued that Nebraska Street is a dedicated 100' wide street and it doesn't need to be that wide. They circulated a petition to the residents along Nebraska Street requesting it to be an 80' wide street. They wanted a 60' wide street but compromised with an 80' wide street. Much discussion followed. The Council stated they would not grant a variance. Kramar's will try to get 100% of the property owners along Nebraska Street to sign a petition asking that Nebraska Street be decreased to an 80' right-of-way instead of a 100' right-of-way.

Mayor Trowbridge declared the Public Hearing open at 8:38 p.m. to consider the application of Jim J. Steager d/b/a/ Shop E-Z, 405 D Street, for a Class "D" Liquor License. Jim Steager was present and stated that he was looking forward to operating Shop E-Z. There being no further comments, Mayor Trowbridge closed the Public Hearing at 8:39 p.m..

Council member Lukassen made a motion to approve the application of Jim J. Steager d/b/a/ Shop E-Z located at 405 D Street, David City, for a Class "D" Liquor License. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Hein, Schatz, Smith, and Lukassen. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Mayor Trowbridge declared the Public Hearing open at 8:40 p.m. to consider the application of Lori Ratkovec, d.b.a. D.C. Pub & Grill located at 412 East E Street, David City, for a Class "C" Liquor License. There being no comments, Mayor Trowbridge closed the Public Hearing at 8:41 p.m.

Council member Schatz made a motion to approve the application of Lori Ratkovec, d.b.a. D.C. Pub & Grill located at 412 East E Street, David City, Nebraska, for a Class "C" Liquor License. Council member Scribner seconded the motion. Voting AYE: Council members Smith, Lukassen, Hein, Scribner, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz made a motion to advance to agenda item #28 - Public Hearing concerning the annexation request of Alan D. and Rhonda Zavodny, for the following described real estate, to wit: Part of the Southeast Quarter (SE $\frac{1}{4}$) of Section Twelve (12), Township Fifteen (15), North, Range Two (2), East of the 6th P.M., Butler County, Nebraska, lying east of the right-of-way of the Chicago, Burlington & Quincy Railroad track, consisting of approximately 128.63 acres, more or less, which territory lies contiguous to the corporate limits of the City of David City, Nebraska and remains unsubdivided. Council member Hein seconded the motion. Voting AYE: Council members Lukassen, Scribner, Smith, Hein, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

[On February 13, 2008, Ordinance No. 1067 was introduced. City Attorney Egr had stated that if the property owner to be annexed makes the request for annexation, the statutory rule can be suspended. Therefore, the statutory rule that requires an Ordinance be read on three separate days was suspended and Ordinance No. 1067 was passed on third and final reading. Now it has been determined that you cannot suspend the statutory rule under any circumstance for an annexation.]

Mayor Trowbridge opened the Public Hearing at 8:42 p.m. to consider the request of Alan and Rhonda Zavodny to annex their property described as part of the Southeast Quarter (SE¹/₄) of Section Twelve (12), Township Fifteen (15), North, Range Two (2), East of the 6th P.M., Butler County, NE, lying east of the right-of-way of the Chicago, Burlington & Quincy Railroad track, consisting of approximately 128.63 acres, more or less. Alan Zavodny was present and stated that the initial agreement with B.C. Ethanol has lapsed and there is not an agreement at this time. A bio-diesel plant has been discussed but right now everything is a little iffy. Zavodny stated that they don't know where this is going at this time but they want to do everything to facilitate this for local investors. There was a lien against the property for \$50,000 for the wells, so Alan took care of that. There being no further comments, Mayor Trowbridge declared the Public Hearing closed at 8:47 p.m.

Council member Schatz made a motion to advance to agenda item #29 - Consideration of Ordinance No. 1085 to extend the boundaries and include within the corporate limits of, and to annex to, the City of David City, Nebraska, part of the Southeast Quarter (SE ¹/₄) of Section Twelve (12), Township Fifteen (15), North, Range Two (2), East of the 6th p.m., Butler County, Nebraska, lying east of the right-of-way of the Chicago, Burlington & Quincy Railroad Track, consisting of approximately 128.63 acres, more or less; (Zavodny's). Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Scribner, Hein, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz introduced Ordinance No. 1085 and made a motion to pass Ordinance No. 1085 on the first reading only. Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Scribner, Hein, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried and Ordinance No. 1085 was passed on first reading only as follows:

ORDINANCE NO. 1085

AN ORDINANCE TO EXTEND THE BOUNDARIES AND INCLUDE WITHIN THE CORPORATE LIMITS OF, AND TO ANNEX TO, THE CITY OF DAVID CITY, NEBRASKA, PART OF THE SOUTHEAST QUARTER (SE ¹/₄) OF SECTION TWELVE (12), TOWNSHIP FIFTEEN (15), NORTH, RANGE TWO (2), EAST OF THE 6TH P.M., BUTLER COUNTY, NEBRASKA, LYING EAST OF THE RIGHT-OF-WAY OF THE CHICAGO, BURLINGTON & QUINCY RAILROAD TRACK, CONSISTING OF APPROXIMATELY 128.63 ACRES, MORE OR LESS; TO PROVIDE BENEFITS THERETO; TO PROVIDE FOR SEVERABILITY; TO CONFIRM ZONING CLASSIFICATION; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND TO AUTHORIZE PUBLICATION IN PAMPHLET FORM.

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

SECTION 1: It is hereby found and determined by the Mayor and City Council that:

- (a) The tract of real estate described in Exhibit "A" attached hereto and incorporated herein by reference as if fully set forth is urban and suburban in character and contiguous and adjacent to the corporate limits of said city;
- (b) Police, fire, and snow removal benefits will be immediately available thereto, and City water will be available as provided by law;
- (c) The Zoning classification of such territory as shown on the official zoning map of the City of David City, Nebraska, is hereby confirmed;
- (d) There is a unity of interest in the use of such territory with the use of lots, lands, streets, and highways in the City, and the community convenience and welfare

and the interest of said City will be enhanced through incorporating such territory within the corporate limits of said City.

SECTION 2: That the boundaries of the City of David City, Nebraska, be and hereby are, extended to include within the corporate limits of said City the contiguous and adjacent territory described in Exhibit "A".

SECTION 3: That a certified copy of this Ordinance, together with the map of the territory, be filed on record in the offices of the County Clerk of Butler County, Nebraska.

SECTION 4: That said territory is hereby annexed to the City of David City, Nebraska.

SECTION 5: Upon the taking effect of this Ordinance, the police, fire and snow removal services of said City shall be furnished to the territory herein annexed, and water services will be available as provided by law.

SECTION 6: If any section, subsection, sentence, clause or phrase of this Ordinance or the annexation of the territory by this Ordinance is for any reason held to be unconstitutional or involved, such decision shall not effect the validity of the annexation of other tracts of land, streets or highways by this Ordinance, since it is the express intent of the Mayor and City Council to enact each section, subsection, clause or phrase separately and to annex each tract of land separately.

SECTION 7: 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 8: 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 _____th day of _____, 2008.

Passed on 1st reading only 8-13-08
Mayor Dana Trowbridge

Passed on 1st reading only 8-13-08
City Clerk Joan E. Kovar

Mayor Trowbridge declared an eight minute break at 8:47 p.m. The meeting resumed at 8:55 p.m..

Council member Scribner made a motion to table consideration of the request by David Scribner to place private water and sewer lines for 443 So. 6th Street on and through city property to the September 10th council meeting. City Council member Schatz seconded the motion. Voting AYE: Council members Lukassen, Smith, Hein, Schatz, and Scribner. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Police Chief Sunday is requesting to purchase video equipment (\$1,150.00) for the interview room and one Glock model .22 hand gun .40 caliber (\$362.00 + approximately \$20 for shipping). Police Chief Sunday also provided a demonstration video taken in the interview room at the police station to show the poor quality of the video equipment. The sound fades off

making it difficult to hear what is actually being said. With the passage of LB 179 by the Nebraska Legislature, there is a mandate to electronically record interviews of individuals involved in certain felony cases. Sunday stated that they are asking to purchase the equipment only and they will do the installation themselves. In 2007, the police department sold abandoned and seized vehicles at a city auction and raised approximately \$5,800 which was placed in the Police Department Contingency Fund. These funds could be used for these purchases.

Council member Schatz made a motion to authorize Police Chief Sunday to use Police Department Contingency Funds to purchase video equipment (\$1,150.00) for the interview room and one Glock model .22 hand gun .40 caliber (\$362.00 + approximately \$20 for shipping). Council member Lukassen seconded the motion. Voting AYE: Council members Hein, Scribner, Smith, Lukassen, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

There has been a vacancy since Jim Kruse resigned as Water/Sewer Supervisor effective March 21, 2008.

Council member Schatz made a motion to appoint Gary Janicek as the Water Department Supervisor. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Lukassen, Hein, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz made a motion to appoint Alan Scott Boyd as the Wastewater Department Supervisor. Council member Scribner seconded the motion. Voting AYE: Council members Lukassen, Hein, Smith, Scribner, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz introduced Ordinance No. 1084. Council member Schatz made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Scribner, Hein, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz made a motion to pass and adopt Ordinance No. 1084 on the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Lukassen, Hein, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried and Ordinance No. 1084 was passed and adopted as follows:

ORDINANCE NO. 1084

AN ORDINANCE AMENDING THE PAY SCALE BY ADDING NEW PAY LINES FOR 1) A WATER SUPERVISOR AND 2) A WASTEWATER SUPERVISOR FOR THE CITY OF DAVID CITY, NEBRASKA; TO REPEAL ALL ORDINANCES OR PORTIONS OF ORDINANCES IN CONFLICT THEREWITH; TO PROVIDE FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; AND TO PROVIDE 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 salaries for the following positions for the appointed officers and 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.

SECTION 3. The wages for the Swimming Manager, Assistant Managers, Concession Stand Workers and Lifeguards are set by a separate Ordinance and therefore are not included.

Part-Time Workers

Years in Position	A 0	B 6m	C 1	D 2	E 3	F 4	G 5	H 6	I 7	J 8	K 9	L 10	M 11	N 12	O 13	P 14	Q 15	R 16	S 17	T 18	U 19	V 20
Part-time workers	\$6.92	7.21	7.37	7.50	7.59	7.67	7.80	7.92	8.08	8.21	8.36	8.52	8.65	8.83	9.03	9.23	9.41	9.62	9.80	9.98	10.19	10.39
Zoning Inspector	\$15.00	15.25	15.45	15.50	15.57	15.62	15.69	15.74	15.81	15.86	15.92	15.97	16.03	16.08	16.15	16.21	16.27	16.34	16.41	16.46	16.53	16.63
Bartenders -	Begin @ \$6.00/hr - experienced up to \$6.50																					
Recycling workers -	Begin @ \$6.00/hr - experienced up to \$6.60																					
Years in Position	1	2	3	4																		
Summer Time Help -	\$6.12	6.37	6.62	6.87																		

Full-Time Workers

Years in Position:	A 0	B 6m	C 1	D 2	E 3	F 4	G 5	H 6	I 7	J 8	K 9	L 10	M 11	N 12	O 13	P 14	Q 15	R 16	S 17	T 18	U 19	V 20
Office Staff																						
Clerical I	10.13	10.26	10.38	10.53	10.66	10.79	10.93	11.05	11.19	11.34	11.46	11.60	11.73	11.86	12.00	12.13	12.25	12.40	12.54	12.66	12.80	12.92
Police Clerical	9.61	9.98	10.17	10.32	10.39	10.46	10.53	10.62	10.71	10.81	10.93	11.01	11.11	11.18	11.25	11.33	11.38	11.43	11.49	11.57	11.64	11.71
Acct Clerk I	10.20	10.34	10.53	10.69	10.88	11.03	11.20	11.39	11.53	11.72	11.89	12.06	12.22	12.40	12.58	12.76	12.89	13.05	13.19	13.34	13.52	13.66
Acct Clerk II (includes .50/hr for CMC)	13.11	13.40	13.58	13.75	13.88	13.99	14.08	14.29	14.46	14.65	14.83	15.06	15.25	15.38	15.51	15.64	15.79	15.92	16.05	16.21	16.36	16.51
Utility Staff																						
Power Plant Operator I	10.69	10.88	11.10	11.34	11.53	11.77	11.99	12.20	12.42	12.65	12.87	13.13	13.34	13.57	13.80	14.01	14.27	14.47	14.71	14.95	15.17	15.43
Power Plant Operator	12.92	13.50	14.10	14.28	14.45	14.66	14.94	15.22	15.52	15.81	16.11	16.38	16.59	16.76	16.96	17.16	17.35	17.54	17.75	17.93	18.03	18.12
Power Plant Operator III	16.46	16.66	16.82	17.03	17.17	17.34	17.51	17.66	17.86	18.02	18.18	18.39	18.56	18.74	18.93	19.11	19.28	19.48	19.66	19.83	20.02	20.21
Apprentice Lineman	12.44	12.79	12.96	13.14	13.24	13.34	13.48	13.64	13.82	13.98	14.15	14.33	14.48	14.61	14.71	14.83	14.95	15.06	15.16	15.25	15.41	15.50
Line worker II	14.79	15.11	15.28	15.50	15.61	15.73	15.86	16.04	16.23	16.41	16.63	16.81	16.99	17.15	17.30	17.44	17.56	17.68	17.82	17.96	18.10	18.27
Line worker I	17.53	17.90	18.07	18.27	18.39	18.52	18.67	18.87	19.09	19.28	19.49	19.67	19.90	20.03	20.18	20.33	20.48	20.63	20.79	20.92	21.05	21.21
Line Foreman	18.50	19.14	19.27	19.54	19.70	19.86	20.05	20.30	20.55	20.81	21.07	21.32	21.58	21.72	21.91	22.07	22.26	22.41	22.59	22.76	22.89	23.08
Water/Sewer Operator I	10.69	10.99	11.15	11.34	11.44	11.53	11.65	11.83	12.01	12.18	12.37	12.55	12.74	12.84	12.97	13.12	13.23	13.36	13.50	13.63	13.77	13.90
WA/SE Op 1 w Grade VI	11.32	11.60	11.77	11.94	12.05	12.15	12.25	12.43	12.62	12.79	12.97	13.16	13.33	13.47	13.58	13.71	13.85	13.97	14.08	14.26	14.37	14.49
WA/SE Operator II	12.90	13.11	13.27	13.47	13.64	13.84	14.00	14.22	14.37	14.56	14.75	14.95	15.14	15.31	15.53	15.71	15.91	16.12	16.30	16.49	16.70	16.89
WA/SE Op I I w Gr VI	13.52	13.69	13.88	14.04	14.26	14.42	14.61	14.79	14.99	15.15	15.38	15.54	15.73	15.92	16.13	16.32	16.50	16.71	16.90	17.11	17.30	17.49
WA/SE Op III w Gr VI	15.45	15.79	15.95	16.12	16.23	16.34	16.45	16.67	16.85	16.95	17.18	17.38	17.58	17.70	17.85	17.96	18.08	18.21	18.33	18.47	18.60	18.74
Waste Water Plant Operator	14.58	14.91	15.07	15.22	15.38	15.47	15.57	15.76	15.95	16.12	16.28	16.46	16.68	16.80	16.92	17.06	17.18	17.30	17.41	17.55	17.68	17.82
City Maintenance Staff																						
Years in Position:	A 0	B 6m	C 1	D 2	E 3	F 4	G 5	H 6	I 7	J 8	K 9	L 10	M 11	N 12	O 13	P 14	Q 15	R 16	S 17	T 18	U 19	V 20
Laborer I	7.93	8.13	8.18	8.34	8.41	8.48	8.55	8.66	8.76	8.85	8.96	9.07	9.17	9.23	9.31	9.39	9.45	9.51	9.58	9.65	9.71	9.77
Laborer II	10.57	10.90	11.04	11.22	11.34	11.44	11.53	11.71	11.87	12.04	12.20	12.37	12.54	12.64	12.76	12.85	12.97	13.10	13.19	13.29	13.40	13.53
Maintenance Worker I	10.82	11.10	11.23	11.38	11.46	11.56	11.65	11.81	11.96	12.10	12.24	12.41	12.58	12.67	12.79	12.89	13.01	13.13	13.23	13.33	13.47	13.58
Maintenance Worker II	11.39	11.66	11.83	11.99	12.08	12.18	12.29	12.46	12.64	12.80	12.96	13.14	13.30	13.43	13.56	13.69	13.82	13.94	14.04	14.19	14.32	14.44
Street Foreman	14.31	14.68	14.85	15.06	15.17	15.28	15.45	15.61	15.81	16.00	16.20	16.36	16.58	16.69	16.81	16.94	17.06	17.19	17.32	17.44	17.57	17.70

Police Staff

Police Officer	13.17	13.44	13.60	13.76	13.87	13.97	14.06	14.25	14.37	14.53	14.71	14.88	15.07	15.17	15.31	15.44	15.54	15.66	15.79	15.88	16.00	16.11
Sergeant	15.75	16.09	16.27	16.45	16.62	16.80	16.95	17.05	17.17	17.36	17.56	17.75	17.94	18.08	18.21	18.36	18.49	18.63	18.79	18.91	19.04	19.21

Department Supervisors

Park & Aud Supt.	14.25	14.62	14.79	14.99	15.13	15.24	15.40	15.58	15.80	16.00	16.21	16.39	16.63	16.79	16.94	17.11	17.24	17.40	17.57	17.71	17.89	18.05
City Clerk/Treas CMC MMC	18.35	18.59	18.72	18.83	18.89	18.99	19.08	19.21	19.32	19.43	19.57	19.70	19.80	19.86	19.97	20.05	20.12	20.20	20.31	20.40	20.49	20.57
Licensed Street Supt.	18.44	18.77	18.93	19.10	19.21	19.31	19.43	19.58	19.76	19.92	20.08	20.24	20.42	20.52	20.63	20.74	20.86	20.96	21.07	21.19	21.29	21.43
Water Super w/Gr VI	17.74	17.93	18.12	18.31	18.50	18.69	18.88	19.07	19.26	19.45	19.94	19.83	20.02	20.21	20.40	20.59	20.78	20.97	21.16	21.35	21.54	21.73
Wastewater Super w/Gr VI	17.74	17.93	18.12	18.31	18.50	18.69	18.88	19.07	19.26	19.45	19.94	19.83	20.02	20.21	20.40	20.59	20.78	20.97	21.16	21.35	21.54	21.73
Power Plant Supervisor	18.17	18.71	18.97	19.22	19.37	19.57	19.73	19.99	20.23	20.49	20.75	20.98	21.25	21.41	21.59	21.74	21.91	22.08	22.23	22.41	22.57	22.76
Police Chief	17.54	18.17	18.50	18.82	19.04	19.25	19.48	19.79	20.13	20.44	20.76	21.08	21.41	21.62	21.84	22.06	22.27	22.47	22.70	22.93	23.13	23.37
Electric Supervisor	20.72	21.36	21.67	22.00	22.21	22.43	22.66	23.00	23.31	23.61	23.94	24.26	24.59	24.78	25.01	25.25	25.44	25.66	25.88	26.10	26.28	26.51

SECTION 4. Any and all ordinances, or sections thereof, passed and approved prior to the passage, approval and publication or posting of this ordinance, and in conflict with its provisions, are hereby repealed.

SECTION 5. This ordinance shall be published in pamphlet form and shall be in full force and effect on July 26, 2008 following its passage, approval, and publication as provided by law and city ordinance.

PASSED AND APPROVED this 13th day of August, 2008.

Mayor Dana Trowbridge

City Clerk Joan E. Kovar

The property located at Will Thorpe & Perkins 1st Addition, Block 13, Lot 12 and the S 12' of Lot 9, located on the northwest corner of 11th and "I" Streets, 915 N. 11th Street, owned by Sherry Benson/Ramirez, is currently a vacant lot since the City demolished the sub-standard buildings and filed a lien against the property - Resolution No. 27-2006 in the amount of \$8,797.45. This would be a good site for a city well.

Council member Schatz made a motion to buy the assignment for the taxes, costs, and attorney's fees for the real property located at Will Thorpe & Perkins 1st Addition, Block 13, Lot 12 and the S 12' of Lot 9, located on the northwest corner of 11th and "I" Streets, 915 N. 11th Street, and to proceed with the sale of the property. Council member Hein seconded the motion. Voting AYE: Council members Scribner, Lukassen, Smith, Hein, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Smith made a motion to advance to agenda item #37 - Consideration of Resolution No. 20-2008 prohibiting parking of a particular kind of class of vehicle on City owned parking lots for longer than a period of time necessary to load and unload freight or passengers. Council member Hein seconded the motion. Voting AYE: Council members Lukassen, Scribner, Schatz, Hein, and Smith. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz introduced Resolution No. 20-2008 and moved for its passage and adoption. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Lukassen, Hein, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried and Resolution No.20 - 2008 was passed and adopted as follows:

RESOLUTION NO. 20 - 2008

A RESOLUTION OF THE CITY OF DAVID CITY, NEBRASKA, PROHIBITING PARKING OF A PARTICULAR KIND OR CLASS OF VEHICLE ON CITY OWNED PARKING LOTS FOR LONGER THAN A PERIOD OF TIME NECESSARY TO LOAD AND UNLOAD FREIGHT OR PASSENGERS.

WHEREAS, the City of David City, Nebraska (hereinafter referred to as "City") is an independent body of government, and

WHEREAS, Municipal Code, Chapter 5, Article 7, Section 5-703, provides "the Governing Body may, by resolution, set aside any street, alley, public way or portion thereof where the parking of a particular kind or class of vehicle shall be prohibited, or where the parking of any vehicle shall be prohibited."

WHEREAS, Municipal Code, Chapter 5, Article 7, Section 5-703, also provides "no vehicle prohibited from parking thereon shall stand or be parked adjacent to the curb of said street, alley, public way, or portion thereof, longer than a period of time necessary to load and unload freight or passengers."

WHEREAS, "vehicle" shall mean every device in, upon, or by which any person or property is or may be transported, except devices moved solely by human power.

WHEREAS, "semi-truck" shall be defined as any vehicle that has at least three (3) axles used for cargo and is of the type commonly used for commercial transport purposes.

WHEREAS, "trailer" shall mean a vehicle without motive power, designed and constructed to travel on the public thoroughfares and to be used for human habitation or for transporting property.

WHEREAS, "commercial vehicle" shall be defined as any vehicle with a motor that may be used to commercially transport property.

WHEREAS, semi-truck, trailers and/or commercial vehicle parking within or on the Municipal Auditorium parking lots have become a burden and have produced negative financial impact on the City due to the repair and maintenance cost cause by the parking and driving of semi-trucks/trailers and/or commercial vehicles on the Municipal Auditorium parking lots and on roads leading to the same.

NOW, THEREFORE, be it resolved by the Mayor and City Council of the City of David City, Nebraska:

SECTION 1. It shall be unlawful to park a semi-truck, trailer and/or commercial vehicle upon any street, alley, city owned parking lot, or other public property within an area zoned R-1, R-2, R-3, and R-M except for the purpose of loading or unloading the same, and then only during such times as reasonably necessary for such activity.

SECTION 2. Any person(s) parking a semi-truck, trailer, commercial vehicle, and/or any other vehicle in violation of this Resolution shall be subject to the penalties provided in Chapter 5, Section 7 of the Municipal Code Book and such vehicle may be removed and stored under the supervision of the Municipal Police in a suitable location without further notice to the owner or operator of such vehicle.

SECTION 3. The Municipal Auditorium parking lot(s) shall only be used for Municipal Auditorium events, unless expressed written consent is grant by the City Council of the City of David City, Nebraska prior to.

SECTION 4. Any person(s) who shall violate or refuse to comply with the enforcement of any of the provisions of this Resolution 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.

SECTION 5. If any provision or clause of this Resolution or application thereof to any person or entity or circumstance is held to be unconstitutional or otherwise invalid by any court or competent jurisdiction, such invalidity shall not affect other sections, provisions, clauses or applications hereof which can be implemented with the invalid provision(s), clause(s) or application(s) hereof, and to this end the provisions and clauses of this Resolution are declared to be severable.

SECTION 6. This Resolution shall become effective upon adoption by the City Council and shall be posted in clear view of the general public at the Municipal Auditorium parking lots within thirty (30) days after the effective date.

PASSED AND APPROVED this 13th day of August 2008.

Mayor Dana Trowbridge

ATTEST

City Clerk Joan E. Kovar

Council member Schatz introduced Resolution No. 19-2008 and moved for its passage and adoption. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Lukassen, Hein, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried and Resolution No.19 - 2008 was passed and adopted as follows:

RESOLUTION NO. 19 - 2008

A RESOLUTION OF THE CITY OF DAVID CITY, NEBRASKA, IDENTIFYING A SUBSTANDARD AND BLIGHTED AREA IN NEED OF REDEVELOPMENT AND RECOMMENDING THE SAME TO THE DAVID CITY PLANNING COMMISSION FOR DETERMINATION IF THE SAME IS BLIGHTED AND SUBSTANDARD.

WHEREAS; pursuant to requirements and in conformity with the Nebraska Revised Statutes Legislative 18-2109 through 18-2144.

WHEREAS, the David City Community Redevelopment Authority shall not prepare a Redevelopment Plan unless the governing body has by resolution declared such area to be a substandard or blighted area in need of Redevelopment; and

WHEREAS; the City Council has identified such areas of substandard and blighted conditions; and

WHEREAS; the City Council has completed a Study of the identified area titled "Blight and Substandard Determination Study for Area Referred to as The North Redevelopment Area," and

WHEREAS; the City Council has reviewed such study of the "Blight and Substandard Area Determination Study for Area Referred to as The North Redevelopment Area" and found this study to indicate the determination of substandard and blighted conditions that warrant the need for Redevelopment:

NOW THEREFORE, BE IT RESOLVED that pursuant to Nebraska Revised Statutes 18-2101 through 18-2144 inclusive, the Mayor and City Council of the City of David City hereby submit the "Blight and Substandard Determination Study for Area Referred to as The North Redevelopment Area" to the David City Planning Commission for their determination if the same is blight and substandard.

PASSED AND APPROVED this 13th day of August, 2008.

Mayor Dana Trowbridge

ATTEST:

Joan E. Kovar, City Clerk

Mayor Trowbridge opened the Public Hearing at 9:27 p.m. to consider the request of R.J. and Courtney Hein to annex property containing 147 acres, more or less. It was noted that this same request was considered at the September 12, 2007 meeting, at which time the statutory rule that requires an Ordinance be read on three separate days was suspended and Ordinance No. 1055 was passed on third and final reading. It was noted that an attorney in Lincoln does not agree with City Attorney Egr that you can suspend the statutory rule if the property owner makes the request for annexation. City Attorney Egr apologized for the divergence and felt that the City should re-do this annexation to cover it just in case.

There being no further comments, Mayor Trowbridge declared the Public Hearing closed at 9:28 p.m.

Council member Schatz introduced Ordinance No. 1086 and made a motion to pass Ordinance No. 1086 on the first reading only. Council member Lukassen seconded the motion.

Voting AYE: Council members Scribner, Smith, Lukassen, and Schatz. Voting NAY: None. Council member Hein abstained due to a possible conflict of interest. Council member Yindrick was absent. The motion carried and Ordinance No. 1086 was passed on first reading only as follows:

ORDINANCE NO. 1086

AN ORDINANCE TO EXTEND THE BOUNDARIES AND INCLUDE WITHIN THE CORPORATE LIMITS OF, AND TO ANNEX TO, THE CITY OF DAVID CITY, NEBRASKA, PART OF THE NORTHWEST QUARTER (NW¼) OF SECTION EIGHTEEN (18), TOWNSHIP FIFTEEN (15), NORTH, RANGE THREE (3), EAST OF THE 6th P.M., BUTLER COUNTY, NEBRASKA; TO PROVIDE BENEFITS THERETO; TO PROVIDE FOR SEVERABILITY; TO CONFIRM ZONING CLASSIFICATION; TO REPEAL CONFLICTING ORDINANCES; AND TO PROVIDE FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

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

SECTION 1. It is hereby found and determined by the Mayor and City Council that:

- (a) The tract of real estate described in Exhibit "A" attached hereto and incorporated herein by reference as if fully set forth is urban and suburban in character and contiguous and adjacent to the corporate limits of said City;
- (b) Police, fire, mad snow removal benefits will be immediately available thereto, and City water service will be available as provided by law;
- (c) The Zoning classification of such territory as shown on the official zoning map of the City of David City, Nebraska, is hereby confirmed;
- (d) There is a unity of interest in the use of such territory with the use of lots, lands, streets, and highways in the City, and the community convenience and welfare and the interest of said City will be enhanced through incorporating such territory within the corporate limits of said City.

SECTION 2: That the boundaries of the City of David City, Nebraska, be and hereby are, extended to include within the corporate limits of said City the contiguous and adjacent territory described in Exhibit "A".

SECTION 3: That a certified copy of this Ordinance, together with the map of the territory, be filed on record in the Offices of the County Clerk of Butler County, Nebraska.

SECTION 4: That said territory is hereby annexed to the City of David City, Nebraska.

SECTION 5: Upon the taking effect of this Ordinance, the police, fire and snow removal services of said City shall be furnished to the territory herein annexed, and water service will be available as provided by law.

SECTION 6: If any section, subsection, sentence, clause or phrase of this Ordinance or the annexation of the territory by this Ordinance is for any reason held to be unconstitutional or involved, such decision shall not effect the validity of the annexation of other tracts of land, streets or highways by this Ordinance, since it is the express intent of the Mayor and City Council to enact each section, subsection, clause or phrase separately and to annex each tract of land separately.

SECTION 7: All Ordinances or parts of Ordinances in conflict herewith are hereby

repealed.

SECTION 8: This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

PASSED and APPROVED this _____th day of _____, 2008.

Passed on 1st reading only 8-13-08
Mayor Dana Trowbridge

Passed on 1st reading only 8-13-08
City Clerk Joan E. Kovar

EXHIBIT "A"

Northwest Quarter (NW¼) of Section Eighteen (18), Township Fifteen (15), North, Range Three (3), East of the 6th P.M., Butler County, Nebraska, LESS all real estate conveyed for road purposes,

AND LESS THE FOLLOWING THREE (3) TRACTS OF REAL ESTATE:

TRACT I: A tract of land located in the Northwest Quarter (NW¼) of Section Eighteen (18), Township Fifteen (15) North, Range Three (3), East of the 6th P.M., Butler County, Nebraska, described as follows: Commencing at the Southeast Comer of said Northwest Quarter; thence westerly, 41.0 feet, on the south line of said Northwest Quarter, to a point on the westerly right-of-way line of Nebraska Highway No. 15; thence northerly, 321.00 feet, on said westerly highway right-of-way line, to the point of beginning, said point being 40.08 feet west of the east line of said Northwest Quarter; thence westerly, 340.00 feet, at a right angle to the last described line; thence northerly, 385.00 feet, parallel with the westerly right-of-way line of Nebraska Highway No. 15; thence easterly, 340.00 feet, at a right angle to the last described line, to a point on the westerly right-of-way line of Nebraska Highway Nebraska 15; thence southerly, 385.00 feet, on said westerly right-of-way line to the point of beginning, containing 3.00 acres, more or less.

AND

TRACT II: A parcel of land located in a part of the East Half of the Northwest Quarter of Section 18, Township 15 North, Range 3, East of the 6th P.M., Butler County, Nebraska, being more particularly described as follows: Commencing at the Northeast Comer of said Northwest Quarter; thence N90°00'00"W (assumed bearing) on the North Line of said Northwest Quarter, a distance of 89.01 feet to a point on the westerly right-of-way line of State Highway No. 15, said point also being the point of beginning; thence S06°11'15"E on said westerly right-of-way line, a distance of 221.29 feet; thence N90°00'00"W parallel with said North Line, a distance of 253.85 feet; thence N00°00'00"E perpendicular to said North Line, a distance of 220.00 feet to a point on said North Line; thence S90°00'00"E on said North Line, a distance of 230.00 feet to the point of beginning, containing 1.22 acres, more or less.

AND

TRACT III: A tract of land located in the Southeast Quarter (SE¼) of the Northwest Quarter (NW¼) of Section Eighteen (18), Township Fifteen (15) North, Range Three (3),

East of the 6th P.M., Butler County, Nebraska, described as follows:
Commencing at the SE corner of said NW¹/₄, thence westerly, 41.0 feet, on the South line of said NW¹/₄, to the Point of Beginning, said point being on the westerly right-of-way line of Nebraska Highway No. 15; thence northerly, 321.00 feet, on said westerly Highway right-of-way line; thence westerly 325.00 feet, at a right angle to the last described line; thence southerly, 321.57 feet, parallel with said westerly Highway right-of-way line, to a point on the South line of said NW¹/₄, thence easterly, 325.00 feet, on the South line of said NW¹/₄, to the point of beginning, containing 2.40 acres,

ALSO EXCEPT THE RAILROAD RIGHT-OF-WAY.

Mayor Trowbridge opened the Public Hearing at 9:29 p.m. to consider annexing a tract of land located in the NE¹/₄ of the SW¹/₄ of Section 18 T15N R3E of the 6th P.M., Butler County, Nebraska, legally described as: Commencing at the northeast corner of said SW¹/₄; thence westerly, 241 feet, on the north line of said SW¹/₄, to the Point of Beginning; thence southerly, 145 feet, parallel with the westerly right-of-way line of Nebraska Highway No. 15; thence easterly, 27 feet, parallel with the north line of said SW¹/₄; thence southerly, 256.14 feet, parallel with said westerly Highway right-of-way line, to a point on the north line of a parcel of land conveyed in Microfilm Book 81 page 521; thence westerly, 126 feet, to the northwest corner of said parcel; thence northerly, 401.35 feet, parallel with said westerly Highway right-of-way line, to a point on the north line of said SW¹/₄; thence easterly, 99 feet, to the Point of Beginning, containing 1.07 acres, more or less. This is a strip of land located west of Gary & Louise Niemann's, 3651 MN Rd, David City, NE. There being no comments, Mayor Trowbridge declared the Public Hearing closed at 9:30 p.m.

Council member Schatz introduced Ordinance No. 1087 and made a motion to pass Ordinance No. 1087 on the first reading only. {This is a strip of land just west of Niemann's 3651 MN RD} Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Scribner, Hein, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried and Ordinance No. 1087 was passed on first reading only as follows:

ORDINANCE NO. 1087

AN ORDINANCE TO EXTEND THE BOUNDARIES AND INCLUDE WITHIN THE CORPORATE LIMITS OF, AND TO ANNEX TO, THE CITY OF DAVID CITY, NEBRASKA, A TRACT OF REAL ESTATE LOCATED IN THE NE¹/₄ OF THE SW¹/₄ OF SECTION 18, T15N, R3E OF THE 6TH P.M., BUTLER COUNTY, NEBRASKA, CONSISTING OF APPROXIMATELY 1.07 ACRES, MORE OR LESS; TO PROVIDE BENEFITS THERETO; TO PROVIDE FOR SEVERABILITY; TO CONFIRM ZONING CLASSIFICATION; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND TO AUTHORIZE PUBLICATION IN PAMPHLET FORM.

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

SECTION 1: It is hereby found and determined by the Mayor and City Council that: A tract of real estate located in the NE¹/₄ of the SW¹/₄ of Section 18 T15N R3E of the 6th P.M., Butler County, Nebraska, described as follows: Commencing at the northeast corner of said

SW¼; thence westerly, 241 feet, on the north line of said SW¼, to the Point of Beginning; thence southerly, 145 feet, parallel with the westerly right-of-way line of Nebraska Highway No. 15; thence easterly, 27 feet, parallel with the north line of said SW¼; thence southerly, 256.14 feet, parallel with said westerly Highway right-of-way line, to a point on the north line of a parcel of land conveyed in Microfilm Book 81 page 521; thence westerly, 126 feet, to the northwest corner of said parcel; thence northerly, 401.35 feet, parallel with said westerly Highway right-of-way line, to a point on the north line of said SW¼; thence easterly, 99 feet, to the Point of Beginning, containing 1.07 acres, more or less, is urban and suburban in character and contiguous and adjacent to the corporate limits of said City;

SECTION 2: That the boundaries of the City of David City, Nebraska, be and hereby are, extended to include within the corporate limits of said City the contiguous and adjacent territory described in Section 1.

SECTION 3: That a certified copy of this Ordinance, together with the map of the territory, be filed on record in the offices of the County Clerk of Butler County, Nebraska.

SECTION 4: That said territory is hereby annexed to the City of David City, Nebraska.

SECTION 5: Upon the taking effect of this Ordinance, the police, fire and snow removal services of said City shall be furnished to the territory herein annexed, and water services will be available as provided by law.

SECTION 6: If any section, subsection, sentence, clause or phrase of this Ordinance or the annexation of the territory by this Ordinance is for any reason held to be unconstitutional or involved, such decision shall not effect the validity of the annexation of other tracts of land, streets or highways by this Ordinance, since it is the express intent of the Mayor and City Council to enact each section, subsection, clause or phrase separately and to annex each tract of land separately.

SECTION 7: 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 8: 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 _____th day of _____, 2008.

Passed on 1st reading only 8-13-08
Mayor Dana Trowbridge

Passed on 1st reading only 8-13-08
City Clerk Joan E. Kovar

Ordinance No. 1080 was introduced and passed on 1st reading June 11, 2008, and on 2nd reading July 9, 2008.

Council member Schatz made a motion to amend Ordinance No. 1080 by setting the occupation tax for telephone and telecommunication companies at 3% instead of 5% and

striking Section E - Earmarking. Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Scribner, Hein, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz made a motion to pass Ordinance No. 1080 on the third and final reading, as amended. Council member Hein seconded the motion. Voting AYE: Council members Scribner, Smith, Lukassen, Hein, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

ORDINANCE NO. 1080

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, CREATING SECTION 10-506, AMENDING THE METHOD FOR CALCULATING THE OCCUPATION TAX FOR TELEPHONE AND TELECOMMUNICATION COMPANIES, AND CREATING AN ENFORCEMENT AND REPORTING SYSTEM FOR TELEPHONE AND/OR TELECOMMUNICATION COMPANIES OCCUPATION TAXES AND RATES; PROVIDING FOR AN EFFECTIVE DATE; REPEALING ORDINANCES IN CONFLICT; 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 10, Article 5, of the Municipal Code of the City of David City, Nebraska, be amended as follows:

Article 5. Occupation Taxes

§10-501 **OCCUPATION TAX; AMOUNTS.** For the purpose of raising revenue an annual occupation tax is hereby levied.

Amusement Devices, electronic entertainment or similar machines, per machine,
per year..... \$25.00

Pool Tables, per table, per year \$15.00

Dealers in Alcoholic Beverages:

The occupation tax on dealers in Alcoholic Beverages shall be equal to the license fee charged by the Nebraska Liquor Control Commission....

§10-502 **OCCUPATION TAX; FIRE INSURANCE COMPANIES.** For the use, support, and maintenance of the Municipal Fire Department all revenue realized from the occupation tax on Fire Insurance Companies shall be appropriated to the General Fund which shall then be disbursed to the D.C. Rural Volunteer Fire Department - District #9. (Ref. 35-106 RS Neb.)

§10-503 **OCCUPATION TAX; COLLECTION DATE.** All occupation taxes shall be due, and payable on the first (1st) day of May of each year, except in the event that the said tax is levied daily, and upon the payment thereof by any person or persons to the Municipal Clerk, the said Clerk shall give a receipt, properly dated, and specifying the person paying the said tax, and the amount paid; Provided, occupation taxes collected from Class C liquor licenses shall be due and payable on the first (1st)

day of November. The revenue collected shall then be immediately deposited into the General Fund by the Municipal Treasurer. The Municipal Treasurer shall keep an accurate account of all revenue turned over to her. All forms, and receipts herein mentioned shall be issued in duplicate. One (1) copy shall then be kept by each party in the transaction. (*Ref. 17-525 RS Neb.*)

§10-504 **OCCUPATION TAX; CERTIFICATES.** The receipt issued after the payment of any occupation tax shall be the Occupation Tax Certificate. The said certificate shall specify the amount of the tax and the name of the person, and business that paid the said tax. The Occupation Tax Certificate shall then be displayed in a prominent place, or carried in such a way as to be easily accessible, while business is being conducted. (*Ref. 17-525 RS Neb.*)

§10-505 **OCCUPATION TAX; FAILURE TO PAY.** If any person, company, or corporation fails, or neglects to pay the occupation taxes as provided herein on the day it becomes due, and payable, the Municipality shall then proceed by civil suit to collect the amount due. All delinquent taxes shall bear interest at the rate of one percent (1%) per month until paid. (*Ref. 17-525 RS Neb.*)

§10-506 **OCCUPATION TAX; TELEPHONE COMPANIES AND TELECOMMUNICATIONS COMPANIES**

A. Revenue Measure. The provisions of this section are enacted solely as a revenue measure of the city.

B. Telephone Companies and Telecommunications Companies. An occupation tax is hereby levied and imposed on every company or person who engages in the business of providing local exchange telephone service, intrastate message toll telephone service and mobile telecommunications services for revenue in the city.

C. Mobile Telecommunications Services, defined. As used in this section, mobile telecommunications services shall mean a wireless communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes: (i) Both one-way and two-way wireless communications services; (ii) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations, whether on an individual, cooperative, or multiple basis for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and (iii) any personal communications service;

D. Amount of Tax. The occupation tax shall be **three percent (3%)** of the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service, other than Mobile telecommunications services as defined in this Section, from subscribers within the corporate limits of the City of David City, Nebraska.

If the telecommunications services provided are Mobile telecommunication services as defined in this section, the tax shall be a percentage, as set by the City Fees ordinance, of the gross income received from furnishing service that originates and terminates in the same state to a customer with a place of primary use within the

corporate limits of the City of David City, Nebraska. Gross receipts shall not mean (i) the gross income, including division of revenue, settlements, or carrier access charges received on or after January 1, 1984, from the sale of a telephone communication service to a communication service provider for purposes of furnishing telephone communication service or (ii) the gross income attributable to services rendered using a prepaid telephone calling arrangement.

~~E. Earmarking. Earmarking shall mean devoting a certain source of revenue, such as an occupation tax, to a specific public expenditure. The occupation tax by means of the gross income received from furnishing local exchange telephone service and intrastate message toll telephone services, other than Mobile telecommunication services as defined in Section C, from subscribers within the corporate limits of the City of David City, Nebraska, shall be earmarked for the following public expenditures and based on the following percentages: as follows:~~

~~1. The five percent (5%) occupation tax shall be placed in the Capital Improvement Account and shall be used to construct new hard surface streets, curbs, and/or gutters within the corporate limits of David City, Nebraska. The General Fund of the City of David City, Nebraska, shall receive three percent (3%) of the occupation tax of the gross income received from furnishing local exchange telephone service and intrastate message toll telephone services, other than Mobile telecommunication services as defined in Section C, from subscribers within the corporate limits of the City of David City, Nebraska. Revenue resulting from such percentage of occupation tax shall be used for the purpose of funding general fund activities of the City of David City, Nebraska.~~

~~2. The remaining two percent (2%) of the occupation tax of the gross income received from furnishing local exchange telephone service and intrastate message toll telephone services, other than Mobile telecommunication services as defined in Section C, from subscribers within the corporate limits of the City of David City, Nebraska, shall be used to construct new hard surface streets, curbs or gutters within the corporate limits of David City, Nebraska.~~

E. Quarterly payments: due dates. The payment of any occupation tax levied and imposed by the provisions of this article shall be made in quarterly payments using the calendar quarter year as a basis for determining the due date. Each quarterly payment shall be due thirty (30) days immediately following the termination of each calendar quarter year.

F. Statement to be filed. Every person coming within the provisions of this article shall, on or before the fifteenth day of the month immediately following the termination of each calendar quarter, file with the city clerk, in the case of those persons taxed by section 10-506, a full, complete and detailed statement of the income and gross receipts of said person for the preceding three (3) calendar months, omitting therefrom the appropriate exceptions and exemptions, if any. All statements shall be duly verified as true and correct and sworn to by the manager or managing officer of such person.

G. City's right to inspect. The city shall have the right at any and all times during business hours to inspect, through the comptroller or some other officer appointed by the city council, the books and records of any person coming under the provisions of this article for the purpose of ascertaining the correctness of the required statement.

H. Failure to file statement; interest and penalty. In the event any person coming under the provisions of this article shall refuse, fail or neglect to furnish or file the required statement at the time or times specified, the occupation tax for the preceding three (3) calendar months shall draw interest at the rate of one (1) percent per month after due and payable, and in addition thereto, a penalty of five (5) percent for the failure to file.

I. Interest and penalty on delinquent payments. All delinquent payments shall draw interest at the rate of one (1) percent per month; and, if delinquent for six (6) months or more, a penalty of five (5) percent shall be added thereto in addition to the interest charge.

J. Collection of tax by civil action. In case any person shall fail to make payment of the occupation tax as required by this article, the city shall have the right and may sue any such person or persons in any court of competent jurisdiction for the amount of the occupation tax due and payable and may recover judgment against such person for the amount so due, together with interest and penalties, and may have execution thereon.

K. Disposition of receipts. The occupation taxes paid under the provisions of this article shall be credited to the general fund of the city.

Section 2. The calculation of the amount of occupation tax due under Section I(D) of this ordinance shall commence immediately.

Section 3. That any other ordinance or section passed and approved prior to the passage, approval, and publication or posting of this ordinance and in conflict with the provisions is herewith repealed.

Section 4. This ordinance 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 13th day of August, 2008.

THE CITY OF DAVID CITY, NEBRASKA

Mayor Dana Trowbridge

City Clerk Joan Kovar

Council member Schatz made a motion to authorize Mayor Trowbridge to execute the following loan agreement with Bone Creek Museum of Agrarian Art for the City's Dale W. Nichols painting titled "The Foundation" (1940). Council member Smith seconded the motion. Voting AYE: Council members Scribner, Hein, Lukassen, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

ARTWORK LOAN AGREEMENT

This Artwork Loan Agreement (hereinafter referred to as "AGREEMENT") is made between the City of David City, Nebraska (hereinafter referred to as "LENDER") and the Bone Creek Museum of Agrarian Art (hereinafter referred to as "BORROWER").

WHEREAS, LENDER owns a rare and valuable Dale W. Nichols painting, titled as "The Foundation" (1940) (hereinafter referred to as "ARTWORK") and desires to lend the ARTWORK to BORROWER to publicly exhibit said ARTWORK at Bone Creek Museum of Agrarian Art, 575 "E" Street, David City, Nebraska from April 29, 2008 to an unstipulated time in the future.

WHEREAS, BORROWER desires to exhibit such ARTWORK, subject to the following terms and conditions:

1. **LENDER** shall insure ARTWORK under an all risk property insurance policy, for the amount indicated on the face of the BORROWER'S Contract of Loan document, attached hereto as "Exhibit A", (hereinafter referred to as "LOAN"), against all risks or physical loss or damage from any internal or external causes while on location during the period of the AGREEMENT.
2. LENDER warrants that it has all right, title and ownership interest in the ARTWORK, and that the ARTWORK is not subject to any ownership, lien, encumbrance, copyright infringement or other claim by any other person or entity.
3. For incentive, LENDER shall lend ARTWORK to BORROWER for an unstipulated time in the future, as a long term loan, provided, BORROWER *shall* keep the art in the security of the art museum's vault when the ARTWORK is not being exhibited in the art museum.
4. Except as provided herein or in case of emergency to preserve the ARTWORK, the ARTWORK shall not be cleaned, restored, or otherwise altered without the written consent of the LENDER.
5. No photograph, sketch or reproduction of the ARTWORK shall be made without a signed agreement as to the specific reason for the photograph such as for archival records and for a catalog of an exhibition which includes the work.
6. This AGREEMENT shall be governed by and construed under the laws of the State of Nebraska, which shall be the forum for any litigation arising from or incident to this AGREEMENT.
7. This AGREEMENT and attachments referenced herein shall constitute the entire understanding between the parties with respect to the ARTWORK and may be amended at any time only upon mutual written agreement of the parties.
8. Either party may terminate this AGREEMENT by giving the other party 30 calendar days written notice.

IN WITNESS WHEREOF, this AGREEMENT has been duly executed, in duplicate, by the parties hereto.

Dated this the 13th day of August, 2008.

BONE CREEK MUSEUM OF AGRARIAN ART

Signature: _____
Name: _____
Title: _____

CITY OF DAVID CITY, NEBRASKA

Signature: _____
Name: Dana Trowbridge
Title: Mayor

Council member Schatz made a motion to grant permission to the Bone Creek Museum of Agrarian Art to reproduce or photograph the City's Dale W. Nichols painting, titled "The Foundation" (1940), within the guidelines of fair use of copyrighted material. This includes the use of protected materials for educational purposes, catalogue, record, and publicity purposes. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Lukassen, Hein, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz made a motion to advance to agenda item #47 - Consideration of the Knights of Columbus request for a Bingo Permit at the Knights of Columbus Hall, 517 N. 4th Street, David City, Nebraska. Council member Lukassen seconded the motion. Voting AYE: Council members Smith, Hein, Scribner, Lukassen, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz made a motion to approve the request of the Knights of Columbus for a Bingo Permit at the Knights of Columbus Hall, 517 N 4th Street, David City, Nebraska. Council member Smith seconded the motion. Voting AYE: Council members Hein, Scribner, Lukassen, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz made a motion to advance to agenda item #48 - Consideration of appointing Marianne Long to the Tree Board which is a two year term. Council member Lukassen seconded the motion. Voting AYE: Council members Hein, Scribner, Smith, Lukassen, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz made a motion to appoint Marianne Long to the Tree Board which is a two year term. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Hein, Lukassen, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz made a motion to advance to agenda item #49 - Consideration of appointing Stephanie Summers to the Library Board which is a four year term. Council member Smith seconded the motion. Voting AYE: Council members Hein, Scribner, Lukassen, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz made a motion to appoint Stephanie Summers to the Library Board which is a four year term. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Hein, Lukassen, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz made a motion to advance to agenda item #50 - Consideration of appointing Denny Kirby to the Park Board which is a three year term. Council member Smith seconded the motion. Voting AYE: Council members Hein, Scribner, Lukassen, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Scribner made a motion to appoint Denny Kirby to the Park Board which is a three year term. Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Smith, and Scribner. Voting NAY: Council members Schatz and Hein.

Council member Yindrick was absent. City Clerk Kovar stated that three was not a majority of those elected. City Attorney Egr stated it was a majority of those present and it passed. The motion carried.

Council member Schatz made a motion to go into executive session to discuss negotiations and a personnel matter. Council member Lukassen seconded the motion. Voting AYE: Council members Scribner, Smith, Hein, Lukassen, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Mayor Trowbridge stated that the City Council was going into executive session to discuss negotiations and a personnel matter.

The City Council, Mayor Trowbridge, City Administrator Joe Johnson, City Attorney Jim Egr, Police Chief Sunday, and City Clerk Joan Kovar went into executive session at 9:56 p.m. Police Chief Sunday and City Clerk Kovar were excused from executive session at 10:15 p.m.

Council member Scribner made a motion to come out of executive session at 10:47 p.m. Council member Hein seconded the motion. Voting AYE: Council members Lukassen, Smith, Schatz, Hein, and Scribner. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Hein made a motion to recess to Monday, August 25, 2008, at 6:00 p.m. Council member Schatz seconded the motion. Voting AYE: Council members Smith, Scribner, Lukassen, Schatz, and Hein. Voting NAY: None. Council member Yindrick was absent. The motion carried.

At 10:50 p.m. Mayor Trowbridge declared the meeting recessed to Monday, August 25, 2008, at 6:00 p.m.

August 25, 2008

Mayor Trowbridge called the meeting of the City Council of David City, Nebraska to order at 6:00 p.m. on Monday, August 25, 2008 in the Council Room of the City Office, 557 N 4th Street, David City, Nebraska, to continue the meeting of August 13th, 2008 which had been in recess.

Present for the meeting were: Mayor Dana Trowbridge, Council members Gary Smith, Ted Lukassen, Bill Scribner, Nick Hein, and Bill Schatz, City Administrator Joe Johnson, and City Clerk-Treasurer Joan E. Kovar. Council member Bill Yindrick was absent.

Also present were: Park/Auditorium Supervisor Bill Buntgen, Police Chief Stephen Sunday, Police Department employee Glayda Scofield, Mike & Barb Hiatt, Mike Behrns, Jim Redler, Ken Goodwater, Jeff Hilger, and Banner Press Editor Larry Peirce.

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

Mayor Trowbridge declared the council meeting back in session from the August 13, 2008, meeting which had been in recess.

Mayor Trowbridge declared the Public Hearing open at 6:01 p.m. to consider amending the Land Use Plan Map to change zoning on property located in the Southeast Quarter (SE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$), Section 18, Township 15, Range Three (3) East, Butler County, David City, Nebraska, containing approximately .64 acres, from I-2 (Heavy Industrial) to R-2 (Two Family Residential). It was noted that the Planning Commission met on July 19, 2008, and approved the request of Mike and Barb Hiatt to rezone their property. There being no further discussion, Mayor Trowbridge closed the Public Hearing at 6:02 p.m.

Council member Schatz introduced Ordinance No. 1089 and made a motion to suspend the statutory rule that requires an ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Hein, Scribner, Lukassen, Smith, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz made a motion to pass and adopt Ordinance No. 1089 on the third and final reading. Council member Lukassen seconded the motion. Voting AYE: Council members Smith, Hein, Scribner, Lukassen, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried and Ordinance No. 1089 was passed and adopted as follows:

ORDINANCE NO. 1089

AN ORDINANCE TO AMEND THE LAND USE PLAN BY CHANGING THE ZONING CLASSIFICATION OF REAL ESTATE DESCRIBED FROM I-2 (HEAVY INDUSTRIAL) TO R-2 (TWO FAMILY RESIDENTIAL), REPEAL ANY ORDINANCES IN CONFLICT HEREWITH; DESCRIBE THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT, AND PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. That the land use plan be amended as follows:

- a. To amend the following property from I-2 (Heavy Industrial) to R-2 (Two Family Residential):

the Southeast Quarter (SE ¼) of the Southwest Quarter (SW ¼),
Section 18, Township 15, Range Three (3) East, Butler County,
Nebraska, Containing approximately .64 acres

Section 2. That any ordinance or section of any ordinance passed and approved prior 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 be in full force and effect from and after its passage, approval, and publication as provided by law.

Passed and adopted this 25th day of August, 2008.

Mayor Dana Trowbridge

City Clerk Joan E. Kovar

Mayor Trowbridge declared the Public Hearing open at 6:04 p.m. to consider amending the Official Zoning Map by changing the zoning classification on property located in the Southeast Quarter (SE¼) of the Southwest Quarter (SW¼), Section 18, Township 15, Range Three (3) East, Butler County, David City, Nebraska, containing approximately .64 acres, from I-2 (Heavy Industrial) to R-2 (Two Family Residential). The Planning Commission met on July 19, 2008, and approved the request of Mike and Barb Hiatt to rezone their property. There being no discussion, Mayor Trowbridge closed the Public Hearing at 6:05 p.m.

Council member Schatz introduced Ordinance No. 1090 and made a motion to suspend the statutory rule that requires an ordinance be read on three separate days. Council member Hein seconded the motion. Voting AYE: Council members Smith, Scribner, Lukassen, Hein, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Schatz made a motion to pass and adopt Ordinance No. 1090 on the third and final reading. Council member Hein seconded the motion. Voting AYE: Council members Smith, Lukassen, Scribner, Hein, and Schatz. Voting NAY: None. Council member Yindrick was absent. The motion carried and Ordinance No. 1090 was passed on third and final reading as follows:

ORDINANCE NO. 1090

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP BY CHANGING THE ZONING CLASSIFICATION OF REAL ESTATE DESCRIBED FROM I-2 (HEAVY INDUSTRIAL)

TO R-2 (TWO FAMILY RESIDENTIAL), REPEAL ANY ORDINANCES IN CONFLICT HEREWITH; DESCRIBE THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT, AND PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. That the Official Zoning Map be amended as follows:

- b. To amend the following property from I-2 (Heavy Industrial) to R-2 (Two Family Residential):

the Southeast Quarter (SE ¼) of the Southwest Quarter (SW ¼),
Section 18, Township 15, Range Three (3) East, Butler County,
Nebraska, Containing approximately .64 acres

Section 2. That any ordinance or section of any ordinance passed and approved prior 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 be in full force and effect from and after its passage, approval, and publication as provided by law.

Passed and adopted this 25th day of August, 2008.

Mayor Dana Trowbridge

ATTEST:

City Clerk Joan E. Kovar

Mayor Trowbridge declared the Hearing open at 6:06 p.m. to hear support, opposition, criticism, suggestions, or observations relating to the proposed budget for fiscal year 2008 - 2009.

Police Clerical Glayda Scofield was present. In an effort to balance the budget, it has been suggested to cut the hours for the police clerical making the position part time instead of full-time. Glayda stated that she has worked for the police department for approximately 19 years (full-time as of 9-09-93) and has been doing a very good job. She has worked in government for 29 years. She questioned if she was the only personnel being cut. Mayor Trowbridge stated that this is not personal; it has nothing to do with the job performance. Skip

stated: "We are not doing this to you we are balancing a budget." City Administrator Johnson stated that several years ago there was a part-time position at the City Office that was cut due in an effort to balance the budget. Glayda stated: "Every police officer said they would give up their projected 4% COL to keep me; the public are going to miss me too." "I am buying my home which is a trailer; I trusted I was doing a good job." Council member Schatz stated "I was on the Finance Committee and I had a problem with this; this troubled me; I don't have a problem if we want to look at it; I feel \$12,000 can be found".

Park Supervisor Bill Buntgen commented that he will be reactive instead of proactive; if something breaks he will fix it; and he may not have any summer time help next year as his budget was also cut.

The Council is also considering cutting the budget for the ball program. Mike Behrns, who has voluntarily worked with the ball program, stated that the cut would be the end of the ball program for kids. "What you have basically done is shut the program down; as of tonight you can consider it done." "I've made up my mind I'm not going to do it any more for free if the city isn't going to support the program they've supported since the 1950's". Mayor Trowbridge stated that was his choice.

Citizen Jim Redler stated that the City seems to spend a lot of money on surveys, engineering fees, and attorney's fees and questioned if that was really necessary. City Administrator Johnson stated that an \$8,000 consultant fee concerning downtown redevelopment resulted in the City gaining a \$250,000 grant to help repair "D" Street west of 4th Street. Council member Schatz stated that sometimes the expense is a necessary evil.

Mayor Trowbridge closed the hearing to hear support, opposition, criticism, suggestions, or observations relating to the proposed budget for fiscal year 2008 - 2009 at 6:35 p.m.

There being no further business to come before the Council, Council member Hein made a motion to adjourn. Council member Smith seconded the motion. Voting AYE: Council members Schatz, Scribner, Lukassen, Smith, and Hein. Voting NAY: None. The motion carried and Mayor Trowbridge declared the meeting adjourned at 6:36 p.m.

Mayor Dana Trowbridge

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES
August 13 and August 25, 2008

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 August 13 and August 25, 2008; 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