

CITY COUNCIL PROCEEDINGS

October 12, 2005

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

Present for the meeting were: Mayor Stephen Smith, Council members Gary Smith, Ted Lukassen, Nick Hein, Bill Schatz, and Mark Kirby, City Administrator Jeff Fiegenschuh, City Attorney Jim Egr, Police Chief Stephen Sunday, Water/Sewer Supervisor Jim Kruse, Street Superintendent Jim McDonald, Park/Auditorium Supervisor Bill Buntgen, Banner Press Editor Larry Peirce, Michael Moravec, and City Clerk-Treasurer Joan E. Kovar. Council member Gary Kroesing was absent.

The meeting opened with the Pledge of Allegiance.

The minutes of the September 14th, 2005 meeting of the Mayor and City Council were approved upon a motion by Council member Hein and seconded by Council member Lukassen. Voting YEA: Council members Smith, Kirby, Schatz, Lukassen, and Hein. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Mayor Smith asked for Petitions, Communications and Citizens' Concerns in addition to those contained in the Agenda packets. There were no petitions. Communications were acknowledged from Gordon Harms verifying his favorable experiences at the David City Municipal Airport, and Janis Cameron concerning reasons the city's new comprehensive plan should be adopted.

Representatives were present to explain the Fraternal Order of the Eagles Club and to advise the Council that they are trying to start an Eagles Club in David City. An organizational meeting is tentatively scheduled for November 7 at 7:00 p.m. at the Thorpe Opera House.

Mayor Smith asked for consideration of claims. Council member Smith made a motion to authorize the payment of claims. Council member Lukassen seconded the motion. Voting YEA: Council members Hein, Schatz, Kirby, Lukassen, and Smith. Voting NAY: None. Council member Kroesing was absent. The motion carried.

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

City Administrator Fiegenschuh reported that the Sewer Participation Service Agreement with Henningsen Foods was renegotiated to provide an equitable division of costs based upon usage of the waste water treatment facility. Henningsen's payment will be increased to approximately \$24,211 per month.

Police Chief Sunday reported the next Board of Health meeting will be Wednesday, November 2, 2005 at 5:30 p.m. in the City Office meeting room.

A council member noted that Zoning Administrator Roger Kotil's report stated that on September 9th Kotil ok'd zoning permits for Jim Egr (addition to house) and Roger Kotil (garage). This is not a good policy. The Council agreed that Roger should not approve his own zoning applications and that the City Administrator should check and sign off on any and all permits for the Zoning Administrator.

Mayor Smith scheduled a Committee of the Whole Meeting for Monday, October 24, 2005 at 6:00 p.m. in the City Office meeting room.

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

Mayor Smith opened the Public Hearing at 7:41 p.m. concerning the revised/updated Comprehensive Plan. The plan is a guide to steer the city into the future. There being no further discussion, Mayor Smith declared the Public Hearing closed at 7:48 p.m..

Council member Schatz introduced Ordinance No. 1012 adopting the revised/updated comprehensive plan. Council member Schatz made a motion to pass and adopt Ordinance No. 1012 on the first reading only. Council member Lukassen seconded the motion. Voting YEA: Council members Hein, Kirby, Smith, Lukassen, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried and Ordinance No. 1012 was passed on 1st reading only as follows:

ORDINANCE NO. 1012

AN ORDINANCE ADOPTING A REVISED/UPDATED COMPREHENSIVE PLAN OF THE CITY OF DAVID CITY, NEBRASKA; REPEALING ANY CONFLICTING ORDINANCES; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

SECTION 1. There is, hereby, adopted and incorporated by reference for the City of David City, Nebraska, a "Comprehensive Plan" of the City of David City, Nebraska, as prepared by Olsson Associates, and published in book form entitled "David City Comprehensive Plan", dated August 2005.

SECTION 2. The Comprehensive Plan is intended to be used as a guideline and decision-making tool for community development. The plan is broad in its approach and does not include specific lot-level recommendations. The plan is governed by the David City Zoning and Subdivision regulations.

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

Dated this ____ day of _____, 2005.

Passed on 1st reading only 10-12-05
Mayor Stephen Smith

Passed on 1st reading only 10-12-05
City Clerk Joan E. Kovar

Council member Kirby introduced Resolution No. 18 - 2005 adopting the Governmental Deferred Compensation Plan and moved for its passage and adoption. Council member Smith

seconded the motion. Voting YEA: Council members Schatz, Lukassen, Hein, Smith, and Kirby. Voting NAY: None. Council member Kroesing was absent. The motion carried and Resolution No. 18 - 2005 was passed and adopted as follows:

RESOLUTION NO. 18 - 2005

A resolution of the City of David City, Nebraska hereafter referred to as "Employer".

WHEREAS, the Employer is served by employees who provide valuable services; and,

WHEREAS, the Employer has established a Governmental Deferred Compensation Plan for its employees to serve the vital interests of the Employer and to enable it to provide reasonable retirement security for its employees, by providing enhanced future financial security; and,

WHEREAS, the Employer desires to provide the flexibility of a Governmental Deferred Compensation Plan to assist in the promotion of its vital personnel system; and,

WHEREAS, the Employer believes the establishment of a Governmental Deferred Compensation Plan will promote the retention of competent and valuable employees; and,

WHEREAS, the Employer desires to incorporate the model amendments for governmental Section 457(b) Plans that have been published by the Internal Revenue Service in Revenue Procedure 2004-56; and,

WHEREAS, it is to the Mutual Benefit of the Employer and its employees to have a Governmental Deferred Compensation Plan:

NOW, THEREFORE, BE IT RESOLVED that the Employer hereby adopts the Governmental Deferred Compensation Plan, attached hereto;

BE IT FURTHER RESOLVED that the Employer hereby appoints the City Administrator and the City Treasurer to serve as the committee and be responsible for administration of the plan;

Passed and approved this 12th day of October, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Hein made a motion to advance to agenda item #11 - Consideration of price quotes for updates at the water treatment plant concerning the clarifier and filters. Council member Kirby seconded the motion. Voting YEA: Council members Lukassen, Smith, Schatz, Kirby, and Hein. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Water/Sewer Supervisor Jim Kruse reported that he has only received one price quote from US Filter concerning the clarifier and filters at the water treatment plant. US Filter is the original manufacturer of the water treatment plant equipment and they did the filter repairs in 2000.

Council member Schatz made a motion to accept the price quote of US Filter in the amount of \$88,967.00 which is for parts only. Council member Smith seconded the motion. Voting YEA: Council members Hein, Kirby, Lukassen, Smith, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Council member Schatz made a motion to table consideration of agenda item #10 - Consideration of a lease agreement with Mike Moravec concerning a billboard sign on Airport property, because Mike Moravec was expected to arrive at a later time. Council member Hein seconded the motion. Voting YEA: Council members Kirby, Lukassen, Smith, Hein, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried.

City Administrator Fiegenschuh reported that Phil Lorenzen of Kirkpatrick, Pettis did not send any information concerning the Public Facilities Construction and Finance Act. Therefore, Council member Schatz made a motion to table consideration of a resolution concerning the Public Facilities Construction and Finance Act. Council member Hein seconded the motion. Voting YEA: Council members Kirby, Lukassen, Smith, Hein, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Park/Auditorium Supervisor Bill Buntgen presented the following bids for Auditorium window replacement units. Buntgen stated that the bids are all equal and comparable - all bidding apples to apples. The City will install the windows which will include the replacement of all of the upstairs windows except the glass ones in the curved wall.

Sack Lumber Company, David City, NE: Marvin Magnum Double Hung Windows White Clad Exterior	\$50,590.00
Coufal Lumber Company, Schuyler, NE Marvin Windows; Double hung Insulated Glass Low E Argon Stone White Clad Exterior - Fiberglass screen	\$51,912.00
Chicago Lumber Company, Norfolk, NE Marvin Windows Stone White Clad Exterior	\$52,528.80

Council member Schatz made a motion to accept the low bid of Sack Lumber Company in the amount of \$50,590.00 for Marvin windows for the upstairs of the city auditorium. Council member Smith seconded the motion. Voting YEA: Council members Hein, Lukassen, Kirby, Smith, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried.

City Administrator Fiegenschuh reported that a few council members asked him to prepare some information on the possible costs and revenues for the city by contracting our street sweeper. Based on contracting with Bellwood only, Fiegenschuh presented the following:

Currently the sweeper gets approximately 5 miles per gallon and has a top speed of 22 mph. The street department charges \$1 per mile to provide any services outside the city limits. Based on current gas prices and the number of miles between David City and Bellwood, I would recommend that the city charge at

least \$2.50 per mile. This will cover our diesel costs and any maintenance costs we might incur by traveling with the vehicle on the highway. However, if you decided to move forward with this project and look at contracting with other communities I recommend that the city purchase a flat bed trailer to haul the sweeper.

At this point, Bellwood has shown an interest in cleaning their streets at least once per month. The area to be cleaned would include the main street from the Ampride through town to the city offices. This is the only street in town with curb and gutter.

If we clean the street in Bellwood twice a month at \$115 per hour (based on an average of 2 hours to clean the street and one hour driving time to and back from Bellwood) we would generate approximately \$8,400. This total includes the fee of \$2.50 per mile and is based on twice a month cleanings. Finally I want to remind you that Bellwood and Rising City are not interested in this service until this spring. We can discuss this in more detail at the meeting.

The following letter was received:

Rose Equipment Inc.

October 10, 2005

Dear Johnston 3000 Customer,

This letter is in regard to extended highway travel of the Johnston 3000 Sweeper. It is not advisable to run the Johnston 3000 for long periods of time, such as highway driving. This unit is designed to be driven more in the 4 to 5 mile sweeping range without stopping for the hydrostatic system to cool.

Normal operation of this sweeper will not hurt or damage the hydrostatic drive system. However extended length travel times are not recommended.

Sincerely,
Brad Broz

Council member Hein made a motion to table consideration of an interlocal agreement to provide street sweeping service. This will allow City Administrator Fiegenschuh and Street Superintendent Jim McDonald time to research information on flat-bed trailers, and other options. Council member Schatz seconded the motion. Voting YEA: Council members Kirby, Lukassen, Smith, Schatz, and Hein. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Mayor Smith declared a recess at 8:15 p.m. The meeting resumed at 8:25 p.m.

Council member Kirby introduced Ordinance No. 1013 amending Chapter 10: Business Regulations of the David City Municipal Code Book. City Attorney Egr stated that there are several items that need to be updated. Therefore, Council member Schatz made a motion to pass Ordinance No. 1013 on the first reading only, subject to revisions. Council member Smith

seconded the motion. Voting YEA: Council members Lukassen, Hein, Kirby, Smith, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried.

ORDINANCE NO. 1013

AN ORDINANCE AMENDING CHAPTER 10: BUSINESS REGULATIONS OF THE DAVID CITY MUNICIPAL CODE BOOK; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. Chapter 10: Business Regulations of the David City Municipal Code Book be amended to read as follows:

Chapter 10

BUSINESS REGULATIONS

Article 1. Alcoholic Beverages

§10-101 **ALCOHOLIC BEVERAGES; DEFINITIONS.** All words and phrases herein used are to have the definitions applied thereto, as defined in the Liquor Control Act of the State of Nebraska. *(Ref. 53-103 RS Neb.)*

§10-102 **ALCOHOLIC BEVERAGES; LICENSE REQUIRED.** It shall be unlawful for any person to manufacture for sale, sell, keep for sale, or to barter any alcoholic liquors within the Municipality unless said person shall have in full force and effect a license as provided by the Nebraska Liquor Control Act. *(Ref. 53-168.06 RS Neb.)*

§10-103 **ALCOHOLIC BEVERAGES; LOCATION.** It shall be unlawful for any person or persons to own, maintain, manage, or hold open to the public any establishment for the purpose of selling at retail any alcoholic liquor within one hundred and fifty (150') feet of any church, school, hospital, or home for aged or indigent persons or veterans, their wives or children; Provided, this prohibition shall not apply to any location within such distance when the said establishment has been licensed by the Nebraska Liquor Control Commission at least two (2) years, and to hotels offering restaurant service, regularly organized clubs, or to restaurants where the selling of alcoholic liquors is not the principal business carried on, if the said hotel, club, or restaurant were licensed and in operation prior to May 24, 1935. No alcoholic liquor, other than beer, shall be sold for consumption on the premise within three hundred (300') feet from the campus of any college within the Municipality. *(Ref. 53-177 RS Neb.)*

§10-104 **ALCOHOLIC BEVERAGES; DWELLINGS.** Except in the case of hotels and clubs no alcoholic liquor shall be sold at retail upon any premise which has any access which leads from such premise to any other portion of the same building used for dwelling or lodging purposes, and which is permitted to be used by the public. Nothing herein shall prevent any connection with such premise, and such

other portion of the building which is used only by the licensee, his family, or personal guests. (Ref. 53-178 RS Neb.)

§10-105 **ALCOHOLIC BEVERAGES; LICENSE DISPLAYED.** Every licensee under the Nebraska Liquor Control Act shall cause his license to be framed and hung in plain public view in a conspicuous place on the licensed premise. (Ref. 53-148 RS Neb.)

§10-106 **ALCOHOLIC BEVERAGES; LICENSEE REQUIREMENTS.** It shall be unlawful for any person or persons to own an establishment that sells at retail any alcoholic beverages unless said person is a resident of the county in which the premise is located; a person of good character and reputation; a citizen of the United States; a person who has never been convicted of a felony; a person who has never been associated with, or kept a house of ill fame; a person who has never been convicted of, or pleaded guilty to, a crime or misdemeanor opposed to decency and morality; a person who has never had a liquor license revoked for cause; or a person who has not acquired a beneficial interest in more than two (2) alcoholic beverage retail establishments since March 4, 1963. (Ref. 53-125 RS Neb.)

§10-107 **ALCOHOLIC BEVERAGES; MUNICIPAL EXAMINATION.** Any person or persons desiring to obtain a license to sell alcoholic liquors at retail shall file with the Liquor Control Commission. The Commission shall then notify the Municipal Clerk by registered or certified mail. The Governing Body shall then meet and determine the desirability of the application and report its recommendation for approval or denial of the application in writing to the Nebraska Liquor Control Commission within forty-five (45) days of receipt from the Nebraska Liquor Control Commission. The Governing Body may examine, or cause to be examined, under oath, any applicant; examine, or cause to be examined, the books and records or any such applicant; to hear testimony, and to take proof for its information in the performance of its duties. For the purpose of obtaining any of the information desired, the Governing Body may authorize its agent, Municipal Clerk or the Municipal Attorney, to act on its behalf. The Governing Body may conduct the examination and hold the hearing upon the receipt from the Commission of the notice and copy of the application. The Governing Body shall fix a time and place at which a hearing will be held, and at which time the Governing Body shall receive evidence, under oath, either orally, or by affidavit, from the applicant and any other person concerning the propriety of the issuance of such license. Notice of the time and place of such hearing shall be published in a legal newspaper in, or of general circulation in, the Municipality one (1) time not less than seven (7), nor more than fourteen (14), days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the local Governing Body in support of or in protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than thirty-five (35) days after the receipt of notice from the Commission. After such hearing, the Governing Body shall cause to be spread at large in the minute record of its proceedings a resolution recommending either issuance or refusal of such license. The Municipal Clerk shall thereupon mail to the Commission by first class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice. (Ref. 53-131, 53-134 RS Neb.)

§10-107.01 ALCOHOLIC BEVERAGES; SPECIAL DESIGNATED PERMIT; ISSUANCE; PROCEDURE; FEE.

(1) The Nebraska Liquor Commission may issue a special designated permit for consumption of alcoholic liquor at a designated location to a licensee, a municipal corporation, a fine arts museum incorporated as a nonprofit corporation, a religious nonprofit corporation which has been exempted from the payment of federal income taxes, or any other nonprofit corporation the purpose of which is fraternal, charitable, or public service and which has been exempted from the payment of federal income taxes under conditions specified in this section.

(2) No licensee, organization, or corporation enumerated in this section may be provided a special designated permit under this section for more than six (6) calendar days in any one (1) calendar year. Only one (1) permit shall be required for any application for two (2) or more consecutive days. This subsection shall not apply to any licensee holding a catering permit.

(3) Except for any special designated permit issued to a licensee holding a catering permit, there shall be a fee of twenty-five dollars (\$25.00) for each day identified in the special designated permit. Such fee shall be submitted with the application for the special designated permit and collected by the Commission and deposited with the State Treasurer who shall credit the fee to the General Fund. The applicant shall be exempt from the provisions of the Nebraska Liquor Control Act requiring a registration fee and the provisions that require an expiration of forty-five (45) days from the time the application is received by the Commission prior to the issuance of a permit, if granted by the Commission. The licensees, municipal corporations, organizations, and nonprofit corporations enumerated in this section seeking a special designated permit shall file an application on such forms as Commission may prescribe. Such forms shall contain, along with other information as required by the Commission, (a) the name of the applicant, (b) the particular place for which a special designated permit is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the place, (c) the name of the owner or lessee of the premises for which the special designated permit is requested, (d) sufficient evidence that the holder of the special designated permit, if issued, will carry on the activities and business authorized by the special designated permit for him, her, or itself and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (e) a statement of the type of activity to be carried on during the time period for which a permit is requested, and (f) sufficient evidence that the activity will be supervised by persons or management who are agents of and directly responsible to the permittee.

(4) No special designated permit provided for by this section shall be issued by the Commission without the approval of the local Governing Body. The local Governing Body may establish criteria for approving or denying a special designated permit. The local Governing Body may designate an agent to determine whether a special designated liquor permit is to be approved or denied. Such agent shall follow criteria established by the local Governing Body in making his or her determination. The determination of the agent shall be considered the determination of the City of David City, Nebraska.

(5) If the applicant meets the requirements of this section, a special designated permit shall be granted and issued by the Commission for use by the permittee. All statutory provisions and rules and regulations of the Commission that apply to a retail license shall apply to such permittee with the exception of such statutory provisions and rules and regulations of the Commission so designated by the Commission and stated upon the issued permit, except that the Commission may

not designate exemption of State Statute sections 53-180 to 53-180.07. The decision of the Commission shall be final. If the applicant does not qualify for a special designated permit, the permit shall be denied by the Commission.

(6) A special designated permit issued by the Commission shall be mailed to the City Clerk, who shall deliver such permit to the permittee upon receipt of any fee or tax imposed by the City of David City, Nebraska.

- §10-108** **ALCOHOLIC BEVERAGES; LIQUOR LICENSE RENEWAL.** Retail liquor licenses issued by the Commission and outstanding may be automatically renewed in the absence of a request by the Governing Body to require the said licensee to issue an application for renewal. The Municipal Clerk, upon notice from the Commission, between January tenth (10th) and January thirtieth (30th) of each year, shall cause to be published in a legal newspaper in, or of general circulation in the Municipality, one (1) time, a notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the Municipality; Provided, class C license renewal notices shall be published between the dates of July tenth (10th) and July thirtieth (30th) of each year. The Municipal Clerk shall then file with the Commission proof of publication of said notice on or before February tenth (10th) of each year or August tenth (10th) of each year for Class C licenses. In the event that written protests are filed by three (3) or more residents of the Municipality against said license renewal, the Municipal Clerk shall deliver the protests to the Governing Body who shall thereupon proceed to notify the Commission that they are to require the said licensee to submit an application. (Ref. 53-135, 53-135.01 RS Neb.)
- §10-109** **ALCOHOLIC BEVERAGES; OWNER OF PREMISES.** The owner of any premise used for the sale at retail of alcoholic beverages shall be deemed guilty of a violation of these laws to the same extent as the said licensee if the owner shall knowingly permit the licensee to use the said licensed premise in violation of any Municipal Code section or Nebraska Statute.
- §10-110** **ALCOHOLIC BEVERAGES; EMPLOYER.** The employer of any officer, director, manager, or employees working in a retail liquor establishment shall be held to be liable and guilty of any act of omission or violation of any law or ordinance, and each such act or omission shall be deemed and held to be the act of the employer, and will be punishable in the same manner as if the said act or omission had been committed by him personally.
- §10-111** **ALCOHOLIC BEVERAGES; CLEAR VIEW.** It shall be unlawful to use any screen, blind, curtain, partition, article, or other device in the windows or upon the doors of any retail liquor establishment, other than restaurants, hotels, and clubs, which will have the effect of preventing a clear view into the interior of such licensed premise from the street, road, or sidewalk at all times. All licensed premises shall be continuously lighted during business hours by natural or artificial white lights to insure the clear visibility into said establishment. Any licensee who willfully violates the provisions of this section shall be subject to a revocation of his license by the Municipality as provided herein.
- §10-112** **ALCOHOLIC BEVERAGES; MINORS.** It shall be unlawful for any person or persons to sell, or make a gift of, any alcoholic liquors, or to procure any such alcoholic liquors for any minor, or other person who is mentally, physically or otherwise incompetent, whether due to natural disabilities or the prior consumption of alcoholic beverages. (Ref. 53-180 RS Neb.)

§10-113 **ALCOHOLIC BEVERAGES; CREDIT SALES.** No person shall sell or furnish alcoholic liquor at retail to any person or persons for credit of any kind, barter, or services rendered; Provided, nothing herein contained shall be construed to prevent any club holding a Class C license from permitting checks or statements for alcoholic liquor to be signed by members, or guests of members, and charged to the accounts of the said members or guests in accordance with the by-laws of any such club; and Provided further, nothing herein shall be construed to prevent any hotel or restaurant holding a Class C license from permitting checks or statements for liquor to be signed by regular guests residing in the said hotel, and charged to the accounts of such guests. *(Ref. 53-183 RS Neb.)*

§10-114 **ALCOHOLIC BEVERAGES; SPIKING BEER.** It shall be unlawful for any person or for any licensee to sell or offer for sale in this state any beer to which has been added any alcohol, or to permit any person to add any alcohol to any beer on the premises of such person or licensee. *(Ref. 53-174 RS Neb.)*

§10-115 **ALCOHOLIC BEVERAGES; ORIGINAL PACKAGE.** It shall be unlawful for any person or persons who own, manage, or lease any premise in which the sale of alcoholic beverages is licensed, to have in their possession for sale at retail any alcoholic liquors contained in bottles, casks, or other containers except in the original package. *(Ref. 53-184 RS Neb.)*

§10-116 **ALCOHOLIC BEVERAGES; HOURS OF SALE.** For purposes of this section, “on sale” shall be defined as alcoholic beverages sold at retail by the drink for consumption on the premises of the licensed establishment. “Off sale” shall be defined as alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

It shall be unlawful for any licensed person or persons or their agents to sell any alcoholic beverages within the Municipality except during the hours provided herein:

HOURS OF SALE

Alcoholic Liquors (except beer and wine)

Secular Days

Off Sale6:00 A.M. to 1:00 A.M.

On Sale6:00 A.M. to 1:00 A.M.

Sundays

Off Sale 12:00 Noon to 1:00 A.M.

On Sale 12:00 Noon to 1:00 A.M.

Beer and Wine

Secular Days

Off Sale6:00 A.M. to 1:00 A.M.

On Sale6:00 A.M. to 1:00 A.M.

Sundays

Off Sale6:00 A.M. to 1:00 A.M.

On Sale6:00 A.M. to 1:00 A.M.

Provided that such limitations shall not apply after twelve (12:00) o'clock Noon on Sunday to a licensee which is a non-profit corporation holding a license pursuant to section 53-1245 (5)(C) & (H) Reissue Revised Statutes of Nebraska 1943.

No person or persons shall consume any alcoholic beverages on licensed premises for a period of time longer than fifteen (15) minutes after the time fixed herein for stopping the sale of alcoholic beverages on the said premises.

Nothing in this section shall be construed to prohibit licensed premises from being open for business on days and hours during which the sale or dispensing of alcoholic beverages is prohibited by this section. *(Ref. 53-179 RS Neb.)*

§10-117 **ALCOHOLIC BEVERAGES; SANITARY CONDITIONS.** It shall be unlawful to open for public use any retail liquor establishment that is not in a clean and sanitary condition. Toilet facilities shall be adequate and convenient for customers and patrons and said licensed premise shall be subject to any health inspections the Governing Body or the Municipal Police may make, or cause to be made. All applications for liquor licenses shall be viewed in part from the standpoint of the sanitary conditions, and a report concerning the said sanitary conditions shall be made at all hearings concerning the application for, or renewal of, a liquor license. *(Ref. 53-118 RS Neb.)*

§10-118 **ALCOHOLIC BEVERAGES; HIRING MINORS.** It shall be unlawful for any person to hire a minor regardless of sex under the age of nineteen (19) years to serve or dispense alcoholic liquors, including beer, to said licensee's customers. Persons who are sixteen years old or older may carry alcoholic liquor from licensed establishments when they are accompanied by a person not a minor. Persons who are sixteen years old or older may handle alcoholic liquor containers and alcoholic liquor in the course of their employment. Persons who are sixteen years old or older may remove and dispose of alcoholic liquor containers for the convenience of the employer and customers in the course of their employment. *(Ref. 53-168.06 RS Neb.)*

§10-119 **ALCOHOLIC BEVERAGES; ACQUISITION OF ALCOHOLIC BEVERAGES.** It shall be unlawful for any person to have possession of any alcoholic liquors which shall have been acquired otherwise than from a licensee duly licensed to sell same to such person under the provisions of the Nebraska Liquor Control Act; Providing, nothing herein shall prevent the possession of alcoholic liquor for the personal use of the possessor, his family and guests, nor prevent the making of wine, cider or other alcoholic liquor by a person from fruits, vegetable or grains, or the product thereof, by simple fermentation and without distillation, if it is made solely for the use of the maker, his family and his guests; Provided further, that nothing herein shall prevent any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his profession, or any hospital or institution caring for the sick and diseased persons, from possessing any alcoholic liquor for the treatment of bona fide patients of such hospital or other institution; Provided further, that any drug store employing a licensed pharmacist may possess and use alcoholic liquors in the compounding of prescriptions of duly licensed physicians; and Provided further, that the possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona

fide rite or religious ceremony conducted by such church shall not be prohibited by this section.

§10-120 **LIQUOR APPLICATIONS; RETAIL LICENSING STANDARDS.** The City Council adopts the following licensing standards and criteria for consideration by the Liquor Control Commission of any applicant for a retail alcoholic liquor license, for the upgrading of a license to sell alcoholic liquor, or for the expansion or change in location of the premises, in accordance with the Nebraska Liquor Control Act, Neb. Rev. Stat. §53-132(3)(a) and Section 7 of Legislative Bill 911, Eighty Ninth Legislature, Second Session, 1986:

1. The adequacy of existing law enforcement resources and services in the area.
2. Existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises, potential traffic and parking problems, and the proximity and availability of on-street and off-street parking.
3. Zoning restrictions.
4. Sanitation or sanitary conditions on or about the proposed licensed premises.
5. The existing population, and projected growth, both city-wide and within the area to be served.
6. The existing liquor licenses, the class of such license, and the distance and times of travel to such licenses.
7. The nature and needs of the neighborhood or community where the proposed premises are located as well as its projected growth.
8. Whether the type of business or activity proposed to be operated in conjunction with the proposed license is and will be consistent with the public interest.
9. Whether the applicant can insure that all alcoholic beverages, including beer and wine, will be handled by persons in accordance with Neb. Rev. Stat. §53-168.06 of the Nebraska Liquor Control Act.
10. Whether the applicant has taken every precaution to protect against the possibility of shoplifting of alcoholic beverages, which must be displayed, kept, and sold from an area which is secured to the greatest extent possible.
11. Whether the applicant is fit, willing, and able to properly provide the service proposed in conformance with all provisions, requirements, needs and regulations provided for in the Nebraska Liquor Control Act.
12. Whether the applicant has demonstrated that the type of management and control exercised over the licensed premises will be sufficient to ensure that the licensee can conform to all the provisions, requirements, rules and regulations provided for in the Nebraska Liquor Control Act.
13. The background information of the applicants established by information contained in the public records of the Nebraska Liquor Control Commission.
14. Past compliance with state laws and liquor regulations and municipal ordinances and regulations.
15. If the application is for an on-sale license, whether it is adjunct to a legitimate food service operation as evidenced by percent of gross income allocated to food and liquor, and the type and extent of kitchen facilities.
16. Whether the application will provide an improvement to the neighborhood, a betterment to the Municipality, or a true increase in service to the public at large.
17. Proximity of and impact on schools, hospitals, libraries and public institutions.
18. Whether the type of entertainment to be offered, if any, will be appropriate and nondisruptive to the neighborhood where the premises are located and to the community at large.

19. Whether the application is for a business, and the sole purpose for which is the sale or dispensing of liquor, or when the sale or dispensing of liquor is a substantial integral part of the business, and not just incidental thereto.
20. Applications for Class "B", "C," and "D" licenses (as defined by section 53-124, R.S.S.) Must be for premises which are separate and distinct from any other business activity. Premises shall be deemed separate and distinct only when located in a building which is not adjacent to any other building, or when located within the same building, they shall be so separate by walls (floor to ceiling), that access cannot be had directly from the area of alcoholic liquor sales to any other business activity by means of doors or other openings; provided, nothing herein shall prevent the construction or maintenance of doors that are used by employees; further, any nonconforming premises in existence on the effective date of this ordinance may be continued for the life of the license. Such nonconforming premises may not be enlarged, extended, or restored after damage during interim. For the purposes of this section, other business activity shall mean the sale or display of any food, produce, mercantile product, item or service other than keeping or selling of alcoholic liquors at retail for consumption off the premises and the sale or display of ice, drink mix, tobacco, cups, or carbonated beverages.
21. Whether or not applicant has ever forfeited bond to appear in court to answer charges of having committed a felony, or charges of having violated any law or ordinance enacted in the interest of good morals and decency, or has been convicted of violating for forfeiting bond to appear in court and answer charges for violating any law or ordinance relating to alcoholic liquors.
22. Other information and data that may be reasonably be considered pertinent tothe issuance of the license.

The preceding standards are not necessarily of equal value that can be computed in a mathematical formula. Rather, they are standards which can be weighed and cumulated positively and negatively. The burden of proof and persuasion shall be on the party filing the application. When applicable, the term "applicants" as used herein is synonymous with "licensee." (*Ref. 53-134 RS Neb.*)

Article 2. Sales and Advertising

§10-201 **ITINERANT SALES; REGULATION.** To prevent the sale of fraudulent, dangerous, and unhealthy goods and services, and to protect the public by maintaining records of the products sold and the persons and companies responsible for such sales, all itinerant sales personnel shall, before doing business within the Municipality, make application for and be issued a permit. Application for said permit shall be made to the Police Department and shall contain the necessary information required thereby and identification and documents required for the protection of the residents of the Municipality. Upon approval by the Police Department, the Chief of Police shall certify to the Municipal Clerk such approval, and the Clerk shall then have the authority to issue a sales permit to said approved applicant. Each person granted a permit shall pay a fee of ~~ten~~ twenty-five dollars (\$25.00) to the Clerk, and upon payment, the Clerk may issue a sales permit to such approved applicant. Such permit shall be valid for a period of seven (7) days from and after date of issuance. The date of its expiration shall be clearly marked on the permit. A sales permit shall be required for each person desiring to do business within the Municipality. Any person or persons granted such permit shall be subject to any occupation

taxes and other rules and regulations which the Governing Body deems appropriate for the purposes stated herein. Any permit so granted shall be subject to revocation for good and sufficient cause by the Municipal Police.

- §10-202** **ITINERANT SALES; HOURS OF SOLICITATION.** It shall be unlawful for any solicitor, salesman, or peddler to solicit any individual between the hours of six o'clock (6:00) P.M., and eight o'clock (8:00) A.M., unless they have a previous appointment with the resident, or residents, of the premise solicited. It shall be unlawful for any hour for a solicitor, salesman, or peddler to solicit without a proper permit on his person at all times. *(Ref. 17-134 RS Neb.)*
- §10-203** **ITINERANT SALES; REGULATION, EXCEPTIONS.** The provisions of this Article shall not extend to individuals calling on retail merchants in the corporate limits of the City for the purpose of taking orders or selling of merchandise for resale by such merchants.
- §10-204** **ITINERANT SALES; DEFINITION.** A transient merchant, itinerant merchant, or itinerant vendor is defined as any person, firm, or corporation, whether as owner, agent, consignee, or employee, not a resident of Butler County, who engages temporarily within the Municipality in the business of selling and delivering, or taking orders for, goods, wares, and merchandise, including but not limited to magazines, cleaning supplies, vacuum cleaners, and meat and/or fruit products, to or at homes, apartments, or other residential premises in the Municipality. *(Ref. 17-134 RS Neb.)*
- §10-205** **SIGNS; PERMIT REQUIRED.** Any person or persons wishing to erect or cause to be erected any advertising display, sign, or other construction for the purpose of advertising on or over any Municipal property, or wishing to distribute leaflets or pamphlets upon any Municipal property, shall make an application the Municipal Clerk. Such application shall contain all the necessary information, and documents which the Governing Body deems appropriate. The Governing Body shall then assign to a committee the duty to consider such application, and to recommend the acceptance or rejection of the proposed application. If the Governing Body accepts the application, they shall then direct the Municipal Clerk to issue the said permit. Any person or persons granted a sign permit shall be subject to any fees, taxes, or other rules and regulations which the Governing Body deems appropriate. Any permit so granted shall be subject to revocation for good and sufficient cause by the Governing Body. *(Ref. 17-140, RS Neb.)*

Article 3. Public Amusements

- §10-301** **BINGO; REGULATION.** Games of bingo shall be conducted within the Municipality in accordance with all laws of the Municipality and the State of Nebraska if the said game of bingo is played for or involves profit or gain. Any association duly licensed by the State of Nebraska to conduct the game of bingo shall obtain a written permit from the Governing Body before commencing operation of said game. Application shall be made to the Municipal Clerk for such permit. Said application form shall contain such information and documents or copies thereof as the Governing Body deems necessary to determine whether to grant or reject the application. Upon the determination that granting the application would be proper, the Governing Body shall immediately direct the Municipal Clerk to issue the said license to the

applicant upon the payment of an annual permit fee of ten (\$10.00) dollars. Said license shall be subject to revocation at any time for good cause. Any person or persons, so licensed, shall be subject to any other fees, rules, and regulations which the Governing Body may designate. All permits so issued will automatically expire on September thirtieth (30th), following its issuance or renewal. The fee for each renewal unless otherwise prescribed shall be in the sum of ten (\$10.00) dollars. Said fee shall be credited to the General Fund. The permit shall be on display at any place where a game of bingo is conducted. *(Ref. 9-236 RS Neb.)*

§10-302 **BINGO; TAX.** No occupation tax on any receipts derived from the conduct of bingo shall be levied, assessed, or collected from any licensee under the act by any county, township, district, city, village, or other governmental subdivision or body having power to levy, assess, or collect such tax. ~~A tax on the gross receipts of each licensed association deriving revenue from the game of bingo is hereby imposed and levied against each such association and payable on or before the thirtieth (30th) day of the immediately succeeding calendar quarter to the Municipal Treasurer. Such tax shall be credited to the Municipal General Fund. The tax on the gross receipts will be the tax mandated pursuant to 9-165(2) of the Revised Statutes of Nebraska as presently in existence and amended from time to time.~~ *(Ref. 9-165 RS Neb.) (Amended by Ord. No. 625, 1/23/85) (Ref. 9-239 RS Neb.)*

~~**§10-303** **BINGO; QUARTERLY REPORT.** Each association conducting the game of bingo shall submit a written quarterly report to the Municipal Clerk covering the preceding calendar quarter on or before the thirtieth (30th) day of the immediately succeeding calendar quarter. *(Ref. 9-165 RS Neb.)*~~

§10-303 **BINGO; INCORPORATED REGULATION.** The purpose of the Nebraska Bingo Act is to protect the health and welfare of the public, to protect the economic welfare and interest in the fair play of bingo, to insure that the gross receipts derived from the conduct of bingo are accurately reported in order that their revenue-raising potential be fully exposed, to insure that the profits of bingo are used for lawful purposes, and to prevent the purposes for which the profits of bingo are to be used from being subverted by improper elements. All applicable State statutes as they now exist or may hereafter be amended shall be, and will constitute, a part of this Article as if repeated verbatim herein, and violation of any State statute will be a distinct and separate offense against the Municipality as well as against the State. Violators thereof shall be separately prosecuted by the Municipality for each of such offenses, and if convicted, shall be deemed to be guilty of a misdemeanor. *(Ref. 9-202 thru 9-265 RS Neb.)*

Article 4. Business Enterprises

§10-401 **PLUMBERS; REGISTERED REQUIRED.** No person shall hereafter engage in or work at the business of a master plumber or journeyman plumber in the Municipality until he shall have registered as a master plumber or journeyman plumber. Application for registration shall be made in writing to the Municipal Clerk, showing the name and residence of the applicant, the business location of the applicant, and such other information as may be required. *(Ref. 18-1911 RS Neb.)*

§10-402 PLUMBERS; BOND. Before a plumber may register with the Municipal Clerk, the applicant shall file with the Municipal Clerk a bond, in an amount set by resolution of the Governing Body and on file at the office of the Clerk, signed by one (1) or more sufficient sureties to be approved by the Governing Body or a surety bond of the same amount issued by an approved corporate surety Company. Said bond shall contain the condition that the applicant shall defend, save, keep harmless, and indemnify the Municipality from all liabilities, claims, damages, judgments, costs, and expenses of every nature and description caused by the willful or negligent conduct of the plumber while engaged in the business of plumbing. The provisions of this Section may be satisfied by the applicant depositing with the Clerk an insurance policy providing public liability and property damage insurance to the Municipality and the general public in the same amount as the bond, executed by an insurance company authorized to do business in the State of Nebraska; Provided, an endorsement, approved as to form by the Municipal Attorney, shall be attached to and become part of each and every such liability insurance policy deposited with the Municipality, and said endorsement shall contain each and every condition of said bond required by the Governing Body. The obligee of said bond or the beneficiary of said insurance policy shall be the Municipality, and action may be maintained thereon by anyone injured by a breach of the conditions of said bond or of the covenants contained in the required endorsement on said policy of insurance for a period of one (1) year after the completion of any plumbing work. (Ref. 17-505 RS Neb.)

RESOLUTION NO. 25-1979

WHEREAS, the Governing Body of the City of David City, Nebraska, shall by resolution set the amount of the plumbers bond pursuant to Section 10-402 of the David City, Nebraska, Municipal Code, and

WHEREAS, the Governing Body of the City of David City, Nebraska, shall by resolution set the amount of the electricians bond pursuant to Section 10-404 of the David City, Nebraska Municipal Code.

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

That the plumbers bond be and it is hereby set at \$5,000.00 and the electricians bond be and is hereby set at \$5,000.00, pursuant to the David City, Nebraska, Municipal Code.

Dated this 9th day of April, 1980.

*Vaclav J. Kobza
Council President*

*L. Jean Hansen
City Clerk*

- §10-403** **ELECTRICIANS; REGISTRATION REQUIRED.** No person shall install any electric apparatus within the corporate limits without first having registered with the Municipal Clerk.
- §10-404** **ELECTRICIANS; BOND REQUIRED.** Before any electrician shall be registered with the Municipal Clerk, the applicant shall execute and file with the Municipal Clerk, a bond in a sum set by resolution of the Governing Body and on file at the office of the Clerk to be approved by the Governing Body and conditioned that the licensee shall indemnify and hold harmless the Municipality from all liability, caused by any negligent or intentional act arising from his electrical work or violation of this Code and shall pay all fines imposed upon him for any violation thereof. The obligee of said bond shall be the Municipality, and action may be maintained thereon by anyone injured by a breach of its conditions for a period of one (1) year after the completion of any electrical work. *(Ref. 17-505 RS Neb.)*
- §10-405** **RAILROAD COMPANIES; SAFE CROSSING.** It shall be the duty of every railroad company doing business in, or traveling through, the Municipality to keep in a suitable, and safe condition the crossings and right-of-way in the Municipality. If any such crossing shall at any time fall into disrepair and become unsafe, or inconvenient for public travel, the Governing Body may, by resolution, call upon the said company to make whatever repairs that they may deem necessary to correct the dangerous condition. Notice of the said resolution shall be served upon the local agent of the said company. In the event that the railroad shall fail, or neglect to repair, and correct the said condition as aforesaid within forty-eight (48) hours, neglect for each twenty-four (24) hours thereafter shall be deemed, and is hereby made a separate, and distinct offense against the provisions herein. *(Ref. 17-143, 17-144 RS Neb.)*
- §10-406** **RAILROAD COMPANIES; SPEED.** It shall be unlawful for any railroad company, its employees, agents, or servants to operate a railroad engine, locomotive, or other vehicle on its tracks within or through the Municipality at a speed in excess of ten (10) miles per hour. *(Ref. 17-551, 17-552 RS Neb.)*
- §10-407** **RAILROAD COMPANIES; OBSTRUCTING TRAFFIC.** It shall be unlawful for any railroad company, its employees, agents, or servants operating a railroad through the Municipality to obstruct traffic on any public street, except in the event of an emergency, for a longer period at one time than five (5) minutes. *(Ref. 17-552 RS Neb.)*
- §10-408** **RAILROAD COMPANIES; DRAINAGE.** It shall be the duty of any railroad company owning, maintaining, or operating a railroad within or through the corporate limits of the Municipality to construct and keep in repair ditches, drains, and culverts along and under their railroad tract at all places within the City limits, where the same may be necessary for the escape of water and proper draining of the territory on either side of said railroads.
- §10-409** **RAILROAD COMPANIES; CROSSING LIGHTS.** At all points on Third (3rd), Fourth (4th), Fifth (5th), "D", "E", and "A" Streets within the corporate limits of David City, Nebraska, where any railroad or railway tracks shall intersect said platted streets, there shall be installed and maintained, wholly at the expense of the said

railroad company or said railroad company maintaining said intersecting railroad or railway, an electric light not less than one hundred (100) candle power, which said electric light shall be kept lighted at all times in accordance with the uniform street lighting schedule provided by the Municipality.

- §10-410** **RAILROAD COMPANIES; AUTOMATIC SIGNALS.** There shall be a bell attached to every engine which shall be continually rung by the engineer or fireman in charge of the engine while passing over any railroad track within the corporate limits of said City. When ordered by the Mayor and Council, approved automatic signals shall be installed at designated crossings.
- §10-411** **RAILROAD COMPANIES; FLYING SWITCHES.** It is hereby declared unlawful for any railroad or railway company, its employees, agents, or servants, to make or permit or allow to be made any running or flying switches across any street opened and in public use.
- §10-412** **RAILROAD COMPANIES; DEPOT PLATFORMS TO BE LIGHTED.** Railroad companies within the corporate limits of the Municipality shall, wholly at their own expense, construct and maintain on their depot platforms electrical light or lights at such height and of such candle power amply to light such platforms as the Mayor and Council shall by resolution direct.
- §10-413** **FIREWORKS VENDOR; REGULATION.** It shall be unlawful for any person or persons to sell fireworks of any description whatsoever, except sparklers, Vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charges for the purpose of making a noise. Color wheels, toy cap pistols and permissible caps may be sold at retail at all times; Provided, that all other fireworks named may be sold only between June twenty-fourth (24th) and July fifth (5th); Provided, that fireworks of any description are permissible for purposes of public exhibitions or displays as authorized by the Governing Body; and further provided that said vendor shall secure a license prior to such sales. Application shall be filed with the Municipal Clerk upon forms supplied by the Municipality and requesting such information and documents as the Governing Body may deem necessary as to whether or not to grant said license. Upon the determination to grant the license, the Governing Body shall direct the Municipal Clerk to collect the appropriate fee and issue said license. Any license so issued may be revoked at any time by the Governing Body upon proper notice and hearing, if one is requested by the licensee. (*Ref. 17-137, 28-1241 thru 28-1250 RS Neb.*)

RESOLUTION NO. 16-1995

WHEREAS, Chapter 10, Article 4, Paragraph 13 of the Municipal Code of the City of David city, Nebraska, provides for Fireworks Vendor Regulations, and,

WHEREAS, said Code also provides for the collection of an appropriate fee by the Municipal Clerk and the issuance of a license;

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

1. That the sum of \$2.50 be deemed an appropriate and reasonable fee for each non-profit vendor, said fee to be collected by the City Clerk when the application is filed; and,
2. That the sum of \$25.00 be deemed an appropriate and reasonable fee for each for profit vendor, said fee to be collected by the City Clerk when the application is filed.

Passed and approved this 14th day of June, 1995.

Stephen Smith
Mayor

Joan E. Kovar
City Clerk

§10-414 RAILROAD COMPANIES; OBSTRUCTING VIEW AT CROSSINGS PROHIBITED.

It shall be unlawful for any railroad company to obstruct or obscure the traveling public's view by storing or parking any railroad car on a railroad track within fifteen (15') feet of the crossing of any such railroad track and a public road within the corporate limits of the Municipality; Provided, however, in no instance shall any person who is authorized to control the movement of such railroad car or cars within such distance be prevented from reasonable conducting his or her business. (Ref. 74-1323 RS Neb.)

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.

~~Class A~~

~~Beer only, retailer on sale, per year.....\$50.00~~

~~Class B~~

~~Beer only, retailer off sale, per year.....\$25.00~~

~~Class C~~

Alcoholic beverages on sale,
— off sale, per year\$250.00

Class D

Alcoholic beverages off sale in
original packages only, per year\$150.00

Class I

Alcoholic beverages on sale, per year\$200.00

Class J

Beer and Wine, on sale, per year\$125.00

Class K

Catering, per year\$75.00

For the purpose of raising revenue, an occupation tax is hereby levied on holders of Special Designated Liquor Permits (except when issued to holders of Class C or Class K Liquor Licenses):

Special Designated Liquor Permits\$25.00

Private Utility Companies:

Telephone companies, annual gross local exchange tariff plus intrastate calls — for phone inside City limits times 2%. **This was previously changed to 3% by Ordinance #934 dated 8/13/03**

Telephone companies, or anyone providing telephone service, shall pay a 3% occupation tax on gross sales.
(Ref. 17-525 RS Neb.)

§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 Fire Department Fund. **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.)*

Article 6. Penal Provision

§10-601 **VIOLATION; PENALTY.** Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

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

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

Passed and approved this _____ day of _____, 2005.

Passed on 1st reading only 10-12-05 subject to revisions
Mayor Stephen Smith

Passed on 1st reading only 1-12-05 subject to revisions
City Clerk Joan E. Kovar

Reimbursement for mileage was discussed. Street Superintendent McDonald stated that the old police car is fine for trips to Columbus or Lincoln, but didn't think that you would want to drive it to Kearney or North Platte. It was also noted that sometimes employees have meetings on the same day and the police car is already in use. Discussion followed. Council member Smith made a motion to pass and adopt Resolution No. 19 - 2005 increasing the mileage reimbursement rate to coincide with the state rate effective January 1, 2006. Council member Lukassen seconded the motion. Voting YEA: Council members Kirby, Schatz, Hein, Lukassen,

and Smith. Voting NAY: None. Council member Kroesing was absent. The motion carried and Resolution No. 19 - 2005 was passed and adopted as follows:

RESOLUTION NO. 19 - 2005

WHEREAS, the Local Government Miscellaneous Expenditure Act provides that local units of government may approve mileage at the rate allowed by §81-1176. The section requires the State Department of Administrative Services to set the mileage rate. This is the mileage rate at which elected and appointed officials, employees, or volunteers may be reimbursed, and

WHEREAS, the State Department of Administrative Services reviews and sets the mileage rate which increases and decreases at various times, and

WHEREAS, the City has had a resolution stating what rate will be paid for mileage.

NOW, THEREFORE, BE IT RESOLVED, that effective January 1, 2006, the mileage rate for the City of David City will be the same as the mileage rate set by the State Department of Administrative Services, which is increased and decreased as necessary.

Passed and approved this 12th day of October, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Hein made a motion to grant non-exclusive garbage franchises to Jim Mally d.b.a. The Garbage Company; Tracy Zastrow / Waste Connections of Nebraska, Inc., d.b.a. The Garbage Company; Greg Cech d.b.a. U & I Sanitation, Drew Hopwood d.b.a. Triple "S" Service; and Ruddy L. & Louis H. Svoboda d.b.a. Svoboda Refuse, providing they pay their annual permit fee. Council member Schatz seconded the motion. Voting YEA: Council members Smith, Lukassen, Kirby, Schatz, and Hein. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Council member Kirby made a motion to appoint Mike Burwell to a 4-year term on the Library Board. Council member Smith seconded the motion. Voting YEA: Council members Hein, Lukassen, Schatz, Smith, and Kirby. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Council member Schatz made a motion to address agenda item #10 - Consideration of a lease agreement with Mike Moravec concerning a billboard sign on Airport property - that had been tabled. Council member Kirby seconded the motion. Voting YEA: Council members Hein, Lukassen, Smith, Kirby, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Mike Moravec stated that he would like to erect a billboard sign on airport property. He is proposing a v-shaped sign advertising his business on one side and the D.C. Area Foundation

on the other side. Council member Schatz stated that he could not support this simply because of the location of the sign on public property. Schatz stated that he has nothing against Mike Moravec but the City should not get in a position where it could look like the City is promoting a particular business. Discussion followed in which the other council members agreed that all of the other billboard signs are on private property and they were not comfortable with the placement on public property. Council member Kirby made a motion to approve a lease agreement with Mike Moravec concerning a billboard sign on Airport property. Mayor Smith asked three separate times for a second. The motion died for lack of a second.

LEASE AGREEMENT

This Lease Agreement is entered into between The City of David City "Owner" and Michael L. Moravec, CPA, P.C. "Tenant". It is agreed that Michael L. Moravec, CPA, P.C. will pay The City of David City for an easement on land located North of the David City Airport on Highway 15 (31-15-3 PT.NE ¼, PT SE ¼ 161.55 Acres) for the purpose of erecting and displaying a billboard sign.

Term of Lease. The initial term of this Lease shall be for a Ten (10) year period, and shall commence October 1, 2005 and end October 1, 2015. Upon expiration of the original Ten (10) year term, this Lease shall automatically renew itself on a year-to-year basis under the same covenants and conditions contained herein, unless either party notifies the other party, in writing, of such party's intent to terminate this Lease. In the event the term of this Lease shall become year-to-year, either party may terminate such year-to-year by giving the other party notice, in writing, of such termination.

Rental Rates. Tenant shall pay to Owner, annually, rent in the total amount of One Hundred Dollars (\$100.00) payable on or before October 1st of each year. Rental rates are subject to change upon the agreement of both parties.

Entire Agreement. This Lease constitutes the entire agreement of the parties hereto. It supersedes prior agreements or understandings between them and it shall not be modified or amended in any manner other than as set forth herein.

IN WITNESS WHEREOF, the parties have signed this Lease on the date first above written.

(Died for lack of a 2nd)
Stephen Smith, Mayor

(Died for lack of a 2nd)
Michael L. Moravec, President, CPA, P.C.

There being no further business to come before the Council, Council member Hein made a motion to adjourn. Council member Kirby seconded the motion. Voting YEA: Council members Smith, Schatz, Lukassen, Kirby, and Hein. Voting NAY: None. Council member Kroesing was absent. The motion carried and Mayor Smith declared the meeting adjourned at 9:18 p.m..

Mayor Stephen Smith

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES
October 12, 2005

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of October 12, 2005; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

City Clerk Joan E. Kovar