

CITY COUNCIL PROCEEDINGS

November 10, 2004

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

Present for the meeting were: Mayor Stephen Smith, Council members Gary L. Kroesing, Ted Lukassen, Mark Kirby, Gary Smith, Nick Hein, and Bill Schatz, City Administrator Jeff Fiegenschuh, City Attorney Jim Egr, Police Chief Stephen Sunday, Water/Sewer Supervisor Jim Kruse, Power Plant Supervisor John Kabourek, Power Plant Operator Eric Betzen, Joyce Stewart of St. Joseph's Villa, Attorney Virgil Johnson of Erickson & Sederstrom, P.C., Jerry D. Rayl, Senior Vice President of Gold Capital Management, Dorothy Bohaty, Greg Janak, Banner Press Editor Larry Peirce, and City Clerk-Treasurer Joan E. Kovar.

The meeting opened with the Pledge of Allegiance.

The minutes of the October 13, 2004 meeting of the Mayor and City Council were approved upon a motion by Council member Hein and seconded by Council member Kroesing. Voting YEA: Council members Schatz, Lukassen, Smith, Kirby, Kroesing, and Hein. Voting NAY: None. The motion carried.

Council member Hein made a motion to advance to agenda item #20 - Consideration of Resolution No. 26-2004 to proceed with the issuance of not to exceed two million five hundred and twenty-five thousand dollars (\$2,525,000.00) in aggregate principal amount of the City of David City, Nebraska, Industrial Development Revenue Refunding Bonds, Series 2004 (the "Refund Bonds") for the purpose of loaning the proceeds thereof to St. Joseph's Villa, Inc. for the purpose of (A) refinancing the City of David City, Nebraska Industrial Development Revenue Bonds (St. Joseph's Villa Inc. Project) Series 1999, and (B) paying the costs incidental to the issuance of the refund bonds; authorizing the execution and delivery of a memorandum of agreement between the City of David City, Nebraska and St. Joseph's Villa with respect thereto; establishing the date and time for the public hearing thereon and authorizing the publication of the notice of such hearing. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Jerry D. Rayl, Senior Vice President of Gold Capital Management and Attorney Virgil K. Johnson of Erickson & Sederstrom, P.C. reported that St. Joseph's Villa is refinancing Industrial Development Revenue Bonds. They will pay off the existing bonds and refinance at a lower interest rate with a maturity date of 2018. The City has no financial obligation.

Council member Kirby made a motion to pass and adopt Resolution No. 26 - 2004. Council member Hein seconded the motion. Voting YEA: Council members Schatz, Smith, Lukassen, Kroesing, Hein, and Kirby. Voting NAY: None. The motion carried and Resolution No. 26 - 2004 was passed and adopted as follows:

RESOLUTION NO. 26 - 2004

RESOLUTION ESTABLISHING AND DECLARING THE INTENTION OF THE MAYOR AND COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA TO PROCEED WITH THE ISSUANCE OF NOT TO EXCEED TWO MILLION FIVE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$2,525,000.00) IN AGGREGATE PRINCIPAL AMOUNT OF THE CITY OF DAVID CITY, NEBRASKA INDUSTRIAL DEVELOPMENT REVENUE REFUNDING BONDS SERIES 2004 (THE "REFUND BONDS") FOR THE PURPOSE OF LOANING THE PROCEEDS THEREOF TO ST. JOSEPH'S VILLA, INC. ("ST. JOSEPH") FOR THE PURPOSE OF (A) REFINANCING THE CITY OF DAVID CITY, NEBRASKA INDUSTRIAL DEVELOPMENT REVENUE BONDS (ST. JOSEPH'S VILLA, INC. PROJECT) SERIES 1999 (THE "SERIES 1999 BONDS"); AND (B) PAYING THE COSTS INCIDENTAL TO THE ISSUANCE OF THE REFUND BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF DAVID CITY, NEBRASKA AND ST. JOSEPH WITH RESPECT THERETO; ESTABLISHING THE DATE AND TIME FOR THE PUBLIC HEARING THEREON AND AUTHORIZING THE PUBLICATION OF THE NOTICE OF SUCH HEARING.

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

Section 1. The Mayor and Council of the City of David City find and determine:

(a) That the City of David City, Nebraska (hereinafter referred to as the "City") is authorized by Section 2 of Article XIII of the Constitution of the State of Nebraska and by Neb. Rev. Stat. §13-1101 through 13-1110 (Reissue 1997) (hereinafter referred to as the "Act") to issue refunding bonds to refinance the Series 1999 Bonds.

(b) The Series 1999 Bonds were originally issued pursuant to the Act for the purpose of (a) loaning the proceeds thereof to St. Joseph's Villa, Inc., a Nebraska nonprofit corporation, to finance the construction of an assisted living facility to accommodate 22 persons to be located at 927 Seventh Street, David City, Nebraska 68632; (b) acquiring certain furnishings, equipment and related facilities, all for use in the assisted living facility (the "Assisted Living Facility"), (c) remodeling the existing nursing home, located at the same address, including the installation of certain security facilities; and (d) acquiring all personal property deemed necessary in connection therewith (collectively the "Project"), and to pay all costs incidental thereto and the costs of issuance of said Bonds. The Project is currently owned by St. Joseph and is subject to a Deed of Trust to the City, pursuant to a Loan Agreement providing for payments sufficient to pay the principal of, premium, and interest on the Series 1999 Bonds. Such Bonds and the interest thereon are payable solely out of the revenues derived from the Loan Agreement and shall never constitute nor give rise to a pecuniary liability of the City of David City, Nebraska, nor a charge against its general credit or taxing powers. The Series 1999 Bonds were approved at a public hearing where all interested individuals were allowed to appear to express their views orally and in writing for o17 against the proposal to issue the Series 1999 Bonds, the location and nature of the Project, and the determination that the Project was within a blighted area and within the development plan or plans of the City for such area.

(c) That the amount necessary to refinance the Series 1999 Bonds by the sale of the Refund Bonds and the application of the proceeds thereof for the payment of the Series 1999 Bonds, including certain qualifying expenses of issuance of the Bonds, will require the

issuance by the City of not to exceed Two Million Five Hundred Twenty Five Thousand Dollars (\$2,525,000) of Refund Bonds of the City pursuant to the provisions of the Act representing a portion of the amount of principal, unpaid interest on the Series 1999 Bonds and any commissions and premiums to be paid in connection with the issuance of the Refund Bonds.

Section 2. The City, by and through its Mayor and Council, does hereby declare its intent to authorize an issue of one or more series of industrial development revenue refunding bonds of the City of David City, Nebraska, qualifying under I.R.C. §145 (1986), for the purpose of loaning the proceeds thereof to St. Joseph to enable it to refinance the Project and to pay certain qualifying expenses of the issuance and sale of the Refund Bonds upon such terms and conditions as may then be agreed upon by the City, St. Joseph and the purchasers of the Bonds.

Section 3. That in accordance with the provisions of I.R.C. §147(f) (1986), the Mayor and Council shall hold a public hearing on the proposal to issue the Refund Bonds and the purpose thereof on December 8, 2004 in the City Council Chambers of the City Office, 557 4th Street, David City, Nebraska. At said public hearing, all interested individuals who appear shall be given an opportunity to express their views, both orally and in writing, for or against the proposal to issue the Refund Bonds to refinance the Series 1999 Bonds. In the event the Mayor and Council determine to proceed with the issuance of said Refund Bonds, the Mayor and Council shall consider the adoption of an ordinance to such effect. The City Clerk is hereby authorized and directed to arrange the publication of the Notice of Intent to issue the Refund Bonds. Such notice shall be substantially in the form attached hereto as Attachment 1.

Section 4. This Resolution is hereby declared to constitute official action of the City to evidence its intent to issue industrial development revenue refunding bonds. The Mayor and the City Clerk or Deputy City Clerk are hereby authorized and directed to execute and deliver any required notice of redemption of the Series 1999 Bonds on January 1, 2005, or on such other date as shall be requested by St. Joseph as required and in accordance with the terms and provisions governing the Series 1999 Bonds.

Section 5. A Memorandum of Agreement, substantially in the form and of the content set forth in Exhibit A, attached hereto and by this reference incorporated herein, shall be entered into with St. Joseph, and the Mayor and the City Clerk or Deputy City Clerk are hereby authorized and directed to execute and deliver said Memorandum of Agreement for and on behalf of the City.

Section 6. That the Bonds, when and if issued, and the interest thereon, shall be payable solely out of the revenues derived from the financing of the Project and shall never constitute an indebtedness of the City within the meaning of any state constitutional provision or statutory limitation, and shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers.

Section 7. This Resolution shall be in full force and effect from and after its passage.

Passed and approved this 10th day of November, 2004.

Stephen Smith, Mayor

Joan E. Kovar, City Clerk

EXHIBIT A

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is entered into between the City of David City, Nebraska (hereinafter referred to as the "City") and St. Joseph's Villa, Inc., a Nebraska nonprofit corporation (hereinafter referred to as the "St. Joseph").

1. Preliminary Statement Among the matters of mutual inducement which have resulted in the execution of this Agreement are the following:

a. The City is a body politic and corporate, duly organized and existing as a city within the State of Nebraska (the "State"), and under the laws of the State is authorized and empowered by the provisions of Neb. Rev. Stat. § 13-1101 through 13-1110 (Reissue 1997) (hereinafter referred to as the "Act") to finance the acquisition of land, buildings, and equipment suitable for use by enterprises within a blighted area of the City and all real and personal property deemed necessary in connection therewith within the meaning of the Act and to issue its revenue bonds and refund bonds for the purpose of defraying the cost of financing any such project or projects, including the cost of the issuance and sale of such bonds.

b. St. Joseph has requested that the City issue and sell not to exceed Two Million Five Hundred Twenty -Five Thousand Dollars (\$2,525,000) of its industrial development revenue bonds pursuant to the provisions of the Act (the "Refunding Bonds") for the purpose of refinancing the Industrial Development Revenue Bonds (St. Joseph's Villa, Inc. Project) Series 1999 (the "Series 1999 Bonds") that were originally issued to finance the construction by St. Joseph's of an assisted living facility, acquiring the necessary furnishings, equipment and all personal property deemed necessary in connection therewith, the remodeling of an existing nursing home, including the installation of certain security facilities located in David City, Nebraska, and acquiring all personal properties deemed necessary in connection therewith (collectively the "Project") and to pay all costs incidental thereto and the costs of issuance of said refunding bonds.

c. The City finds that the refinancing of the Project through the issuance of refunding bonds under the Act will be economically advantageous to the City and the general public welfare and will contribute to the economic growth of the City.

d. St. Joseph's has represented to the City that any refunding bonds issued pursuant to this agreement will be used solely for the purpose of refinancing the Project and its Loan Agreement with the City related thereto and that the refinancing

of the Project through the issuance of refunding bonds will comply with the Act.

2. Undertakings on the Part of the City. In order to effectuate the purposes of the Act, and to promote, develop and advance the general prosperity and economic welfare of the State, the City hereby determines:

a. That it will (i) authorize, issue and sell one or more series of Refunding Bonds pursuant to the Act in the aggregate principal amount of not to exceed Two Million Five Hundred Twenty-Five Thousand Dollars (\$2,525,000) which, taken with other financial resources available to St. Joseph, shall be sufficient to pay the cost of refinancing the Project, including reimbursement or repayment by St. Joseph to the City of any monies owed pursuant to its Loan Agreement with the City, underwriting expenses, attorney, and bond counsel fees and other costs and expenses incident to the authorization, issuance, and sale of such Refunding Bonds, and will enter into a Loan Agreement with St. Joseph with respect to the Project pursuant to which the payments to be paid by St. Joseph under the Loan Agreement shall be sufficient to pay all the principal of, premium, if any, and interest upon the Refunding Bonds as and when the same respectively become due and payable; (ii) adopt such ordinances and authorize the execution and delivery of such instruments and the taking of such actions as may be necessary or advisable for the authorization, issuance and sale of such Refunding Bonds, refinancing the Project and for the execution of the Loan Agreement with respect to the Project and will cooperate with St. Joseph in respect to the issuance and sale of such Refunding Bonds; and (iii) take or cause to be taken such other action as may be required to implement the aforesaid as it may deem appropriate provided that all of the foregoing shall be authorized by law and is mutually acceptable to the City and St. Joseph.

b. Prior to the issuance of any such Refunding Bonds, the City shall, if required, do all such things as may be required by the Internal Revenue Code of 1986, and in the manner as prescribed by the Federal Income Tax Regulations, in order to assure that the issuance thereof is in all respects in compliance therewith.

3. Undertakings on the Part of St. Joseph. Subject to the conditions above stated, St. Joseph agrees as follows:

a. It will use all reasonable efforts to find one or more purchasers for the Refunding Bonds to be issued by the City.

b. Contemporaneously with the delivery of the Refunding Bonds it will enter into a Loan Agreement with the City under the terms of which it will obligate itself to pay to the City sums sufficient in the aggregate to pay the principal of and interest and redemption premium, if any, on all of the Refunding Bonds as and when the same shall become due and payable, such Loan Agreement to contain such provisions required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

4. General Provisions

a. All commitments of the City under paragraph 2 hereof and of St. Joseph under paragraph 3 hereof are subject to the condition that on or before one (1) year from the date hereof (or such other date as may be mutually satisfactory to the City and St. Joseph), the City and St. Joseph shall have agreed to mutually acceptable terms and conditions with respect to the documents and proceedings referred to in paragraphs 2 and 3 hereof.

b. If the events set forth in (a) of this paragraph do not take place within the time set forth or any extension thereof, St. Joseph agrees that it will reimburse the City for all reasonable and necessary expenses which the City may incur at its request arising from the execution of this Agreement and the performance by the City of its obligations hereunder, and this Agreement shall thereupon terminate.

c. All commitments of the City hereof are further subject to the conditions that the City, and its elected and appointed officials, shall in no event incur any liability for any act or omission hereunder, and that the Bonds described herein shall not constitute an indebtedness of the City within the meaning of any constitutional or statutory provisions and shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers.

d. It is expressly understood by both parties to this Agreement that its execution by the City is intended both as an expression of the City's current intention to proceed with the issuance of the Refunding Bonds and to constitute "some other similar official action" for the purposes of the Treasury Regulations promulgated under the I.R.C. The execution of this Agreement by the City is not intended to nor does it create a binding commitment of the City to proceed with the issuance of the Refunding Bonds. It is further understood that the issuance of the Refunding Bonds is subject to further review of the Mayor and Council of the City.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 10th day of November, 2004.

CITY OF DAVID CITY, NEBRASKA

By Stephen Smith

Stephen Smith, Mayor

Joan E. Kovar
Joan E. Kovar, City Clerk

ST. JOSEPH'S VILLA, INC.,
a Nebraska nonprofit corporation

By Joyce Stewart
_____ Its President/Administrator

Mayor Smith asked for Petitions, Communications and Citizens' Concerns in addition to those contained in the Agenda packets.

Council member Gary Smith stated that citizens are concerned that the snow fence is not up on the north side of 11th Street. It was reported that the Street crew was working on erecting the

snow fence on Monday and Tuesday of this week.

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

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

Council member Kirby stated that there have been concerns expressed whether the garage meets the set back codes on the Randy Svoboda house being built at 1470 No. 10th Street. Zoning Administrator Kotil will be asked to check on this.

Council member Kroesing stated that people are cleaning their lawns and the landfill has been locked. Kroesing thought it was to be left open in the fall. Street Superintendent McDonald will be asked about this.

Library Director Kay Schmid's report questioned if the handicapped parking stall could be moved to the first stall on the North east side of the Library. People bringing wheel chair bound patrons to the Library have a hard time unloading their passengers from the back of a van on busy D Street. City Administrator Fiegenschuh will ask Street Superintendent McDonald to move the sign.

Mayor Smith scheduled a Committee of the Whole meeting for Monday, November 29, 2004 at 6:00 p.m. in the meeting room of the City Office.

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

Police Chief Sunday reported that he contacted Zeger's Home Center, Columbus Carpet, Inc., and B-K Flooring of Columbus. Each company took their own measurements. The bid was for a 30 oz. commercial carpet and new cove molding.

Zegers Home Center	\$6,906.67	(254 yds.)
B-K Flooring	\$6,744.90	(245 yds.)
Columbus Carpet	\$6,090.27	(184 yds.)

All three price quotes are for the same brand, model, and weight of carpeting. The difference is how they measured for the carpet. Because of the discrepancy between the bids, Council member Hein made a motion to table consideration of accepting a price quote regarding carpeting for the police department. Hein suggested asking all three bidders to re-measure and rebid. Hein also felt that a 28 oz. carpet would be sufficient. Council member Smith seconded the motion. Voting YEA: Council members Lukassen, Kroesing, Kirby, Schatz, Smith, and Hein. Voting NAY: None. The motion carried.

Police Chief Sunday reported that he did not receive any bids for the clean-up of the Barb Vogl property located at 1077 No. 8th Street. Randy Janak has been very busy cleaning up the property. The property currently meets City Code depending on how you interpret "neatly piled" as he still has scrap iron and lumber piled there.

Mrs. Dorothy Bohaty stated that Randy Janak always manages to clean the property up when

necessary but in a weeks time it will be a mess again.

Council member Hein made a motion to refer the Barb Vogl property located at 1077 No. 8th Street back to the Board of Health for consideration at their January meeting. Council member Smith seconded the meeting. Voting YEA: Council members Kroesing, Schatz, Lukassen, Kirby, Smith, and Hein. Voting NAY: None. The motion carried.

The following bids for the SCADA system for the Power Plant were discussed:

Harold K. Scholz Company:

\$ 80,600 Original Bid (excluding fiber-optic cable)
\$ 32,400 Fiber Optic cable & installation
\$113,000
\$ 7,800 less if city wrecks out old cable
\$105,200 Total

E. A. Pedersen Company

\$168,521 Total (excluding fiber-optic cable & installation)

Olsson Associates

\$ 51,500 Design Fee
\$ 74,835 Construction Estimate
\$126,335 Total (excluding the fiber optic cable & installation)
\$ 3,000 Added to Design Fee for fiber-optic cable installation
\$ 23,625 Added to Construction estimate for fiber-optic cable installation
\$152,960 Total

Council member Kirby made a motion to accept the bid of Harold K. Scholz Company in the amount of \$105,200 for the SCADA system at the Power Plant. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Water/Sewer Supervisor Jim Kruse presented the bids received for a combination Vacuum Sewer Jet Truck:

Elliott Equipment, 1245 Dawes Avenue, Lincoln, NE 68521

New Sterling MX/CAT 3126 210 Horsepower
with 3000 RDS Automatic Transmission.
Vac-Con Model V230H/500 as specified \$155,573.00
Trade In: 1950 Chevy Truck Jet & Vacuum Trailer -6,000.00
\$149,572.00

Demo International Unit, painted red \$145,498.00
Meets specifications other than the color.
Has additional options not asked for.

Wick's Sterling Trucks, Inc., 5040 Russell Circle, Lincoln, NE 68507

2005 Sterling Acterra w/ Vac-Con Model V230H/500 \$150,390.00
Trade Allowance for 1950 Truck Jet and Vacuum Trailer - 6,000.00
\$144,390.00

Rose Equipment Inc.

Option 1:	
Aquatech B-3 Dual Engine Std.	\$ 95,565.00
Water pump 3000 PSI @ 30 GPM	2,000.00
2100 CFM Blower	10,000.00
International Model 4200	<u>45,975.00</u>
	<u>Total:</u> 153,540.00
Deduct for 5-speed auto <u>trans</u>	<u>-3,135.00</u>
	<u>Total:</u> \$150,405.00
Option 2:	
Aquatech B-6	\$107,591.00
International Model 4300	<u>48,715.00</u>
	<u>Total:</u> \$156,306.00
Base Unit:	
Aquatech B-3 Dual Engine Std.	\$ 95,565.00
International Model 4200	<u>45,975.00</u>
	<u>Total:</u> \$141,540.00

Water/Sewer Supervisor Jim Kruse stated that the 1950 sewer jet is currently stored at the light department shop. The new combination Vacuum Sewer Jet Truck will be much larger. The truck has to be stored in a heated garage. Because of the size of the combination Vacuum Sewer Jet Truck, it will not fit in the Sewer Plant garage. The Council members questioned if a cab/over truck would shorten it up considerably. The Council instructed WA/SE Supervisor Kruse to get the overall length of the truck, to check on a cab/over truck, and then measure the garage at the sewer plant to see if either style truck will fit in the garage. Council member Kirby made a motion to table consideration of the bids received for a combination vacuum sewer jet truck. Council member Hein seconded the motion. All of the council members were present, all voted YEA, and the motion carried. WA/SE Supervisor Kruse is to report back to the Council with his findings at the Committee of the Whole meeting scheduled for Monday, November 29th.

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

Council member Hein made a motion to accept the resignation of Carl Hart Sr. as a Trustee of the Library Board. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Kirby made a motion to appoint Lia Rabbe as a Trustee of the Library Board to fill the unexpired term of Carl Hart Sr.. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Hein made a motion to accept the resignation of Ardell Lostroh as a Board of Zoning Adjustment member. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Hein made a motion to appoint Bill Magargal as a member of the Board of Zoning Adjustment. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Kirby made a motion to accept the resignation of Jackie Horan as a Planning Commission member. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Kroesing made a motion to adopt the following application agreement granting non-exclusive franchises to maintain, own, and operate garbage/refuse hauling services in the City of David City. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

AGREEMENT

AN AGREEMENT GRANTING A NON-EXCLUSIVE FRANCHISE TO:

GREG CECH d.b.a. U & I SANITATION

DREW HOPWOOD d.b.a. TRIPLE "S" SERVICE

JIM MALLY d.b.a. THE GARBAGE COMPANY

RUDDY L. & LOUIS H. SVOBODA d.b.a. SVOBODA REFUSE

TRACY ZASTROW / WASTE CONNECTIONS OF NE d.b.a. THE GARBAGE CO.

TO MAINTAIN, OWN, AND OPERATE GARBAGE OR REFUSE HAULING SERVICES IN THE CITY OF DAVID CITY, NEBRASKA; DEFINING TERMS AND SETTING THE TERMS AND CONDITIONS OF THE GRANTS; PROVIDING FOR EXTENSION AND TERMINATION OF THE FRANCHISE;

IT IS HEREBY AGREED BY AND BETWEEN THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, HEREINAFTER REFERRED TO AS "CITY", AND "GRANTEES" AS FOLLOWS:

SECTION 1 – DEFINITIONS

For the purposes of this Agreement, and when not inconsistent with the context, words used herein in the present tense include future; words in plural include the singular, and vice versa. The word "shall" is always mandatory. The captions supplied are for convenience only. The following terms and phrases, as used herein, shall be given the meaning set forth below:

1. "City" is the City of David City, Nebraska, a municipal corporation organized under the laws of the State of Nebraska.
2. "Grantee" is the independent refuse/garbage hauler.
3. "City Council" is the City Council of David City, Nebraska, or its designated representative.
4. "Rate Structure" shall be the regular monthly garbage/refuse charges of the Grantees, charged to resident customers of the "City", consisting of residential, commercial, and special rates.

SECTION 2 – GRANT OF AUTHORITY

There is hereby granted by the City to each of the authorized independent garbage/refuse haulers in the City, the right and privilege to own, operate, and maintain separate and individual garbage and refuse hauling businesses within the City to provide garbage/refuse disposal for the residents of the City upon the following terms and conditions, to-wit:

1. This franchise is “non-exclusive” and is not intended as a restriction of competition in the garbage/refuse hauling business.
2. The term of this franchise agreement relative to disposition of refuse is one year. In the event the City acquires a municipal landfill site, Grantees shall be permitted to continue their refuse hauling business within the City, in which event the City may require that all refuse collected within the City be deposited at such landfill site, and that Grantees comply with all regulations and fees as may from time to time be established in conjunction therewith. Grantees may continue the refuse hauling portion of said business as long as Grantees comply with the rules, regulations, fees and rate structures established by the City relating thereto.
3. Grantees shall at all times during this franchise be subject to all lawful exercise of the police power of the City. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and any other existing applicable ordinances, such additional ordinances as it shall find necessary in the exercise of its police power; provided, however, that such additional ordinances shall be reasonable, shall not conflict with or alter in any manner the rights granted herein, and shall not conflict with the laws of the State of Nebraska, the United States of America, or any other governmental entity exercising jurisdiction over the subject matter of this franchise. The Grantees shall keep a record of log of all complaints from customers within the City, which shall be available for examination by the City Administrator upon request.
4. The individual Grantees herein shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever against the City resulting from negligence on the part of each respective Grantee in the operation of said refuse/garbage hauling businesses. It is specifically understood and agreed that the Grantees are separate and independent refuse haulers, and the foregoing indemnity provisions relate only to loss or liability arising out of the separate operation of each respective grantee.
5. Grantees may establish reasonable rules, rates, and regulations relative to their respective customers, including but not limited to requiring all refuse to be deposited in refuse containers; that all ashes be placed in plastic or paper bags; restriction of pick-ups to

compactable refuse; curb pick-ups; etc.

6. Existing municipal landfill of the City will be available for brush. Rates for pick-up and hauling of brush, and unusual or uncommon refuse/garbage are not restricted by this franchise.
7. The Grantees agree to provide services in accordance with and to fulfill the City's duty to provide facilities and systems as necessary for the safe and sanitary disposal of solid wastes within the solid waste jurisdiction area of the City of David City, Nebraska. The franchise herein granted requires the Grantees in all respects to comply with the requirements of the laws of the State of Nebraska that the solid waste from the solid waste jurisdiction area of the City be disposed in a permitted facility and that all areas of jurisdiction area will have pick-up service available from the Grantees.
8. Grantees may surrender this franchise at any time upon filing with the City Clerk a written notice of its intention to do so at least three (3) months before surrender date. On date of surrender, all rights and privileges and all of the obligations, duties and liabilities of said Grantee in connection with this franchise shall terminate.
9. All rights and privileges and all of the obligations, duties and liabilities created by this franchise shall pass to and be binding upon the successors of the City and the successors and assigns of Grantees. Said franchise shall not be assigned or transferred, except by operation of law or as otherwise provided herein, without the written approval of the City Council, which approval shall not be arbitrarily or unreasonably withheld. Nothing herein shall require City Council approval or prohibit the transfer or assignment of the franchise as security for debt, or in conjunction with a transfer thereof to a corporation in which the Grantee or Grantee's immediate family own at least fifty percent (50%) of the beneficial ownership in such entity.

SUBJECT TO THE ABOVE, GRANTEE, IS HEREBY GRANTED A NON-EXCLUSIVE FRANCHISE.

The City of David City, Nebraska

by

Date:

Attest:

ACCEPTANCE OF FRANCHISE

I hereby accept the above and foregoing franchise agreement, and agree to be bound by the terms and provisions therein contained as amended.

Grantee

Date

Council member Kirby made a motion to pass Ordinance No. 985 on the third and final reading. Council member Smith seconded the motion. Voting YEA: Council members Lukassen, Schatz, Hein, Kroesing, Smith, and Kirby. Voting NAY: None. The motion carried and Ordinance No. 985 was passed on third and final reading as follows:

ORDINANCE NO.

985

AN ORDINANCE AMENDING CHAPTER 6: POLICE 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 6: Police Regulations of the David City Municipal Code Book be amended to read as follows:

Chapter 6 POLICE REGULATIONS

Article 1. Dogs

§6-101 DOGS; LICENSE. Any person who shall own, keep, or harbor a dog over the age of six (6) months within the Municipality shall within thirty (30) days after acquisition of the said dog acquire a license for each such dog. The renewal date for a dog license shall be the first (1st) day of May of each year. The said tax shall be delinquent from and after May tenth (10th); Provided, the possessor of any dog brought into or harbored within the corporate limits subsequent to May first (1st) of any year, shall be liable for the payment of the dog tax levied herein and such tax shall be delinquent if not paid within ten (10) days thereafter. Licenses shall be issued by the Municipal Clerk **upon the payment of a license fee of seven (\$7.00) dollars for each spayed or neutered dog, and ten (\$10.00) for each dog not spayed or neutered.** Said license shall not be transferable and no refund will be allowed in case of death,

sale, or other disposition of the licensed dog. The owner shall state at the time the application is made and upon printed forms provided for such purpose, his name and address and the name, breed, color, and sex of each dog owned and kept by him. A certificate that the dog has had a rabies shot, effective for the ensuing year of the license, shall be presented when the license is applied for and no license or tag shall be issued until the certificate is shown. (Ref. 17-526, 54-603, 71-4412 RS Neb.)

- §6-102** **DOGS; LICENSE TAGS.** Upon the payment of the license fee, the Municipal Clerk shall issue to the owner of a dog license certificate and a metallic tag for each dog so licensed. The metallic tags shall be properly attached to the collar or harness of all dogs so licensed and shall entitle the owner to keep or harbor the said dog until the thirtieth (30th) day of April following such licensing. In the event that a license tag is lost and upon satisfactory evidence that the original tag was issued in accordance with the provisions herein, the Municipal Clerk shall issue a duplicate or new tag for the balance of the year at no charge. All license fees and collections shall be immediately credited to the General Fund. It shall be the duty of the Municipal Clerk to issue tags of a suitable design that are different in appearance each year.
- §6-103** **DOGS; WRONGFUL LICENSING.** It shall be unlawful for the owner, keeper, or harbinger of any dog to permit or allow such dog to wear any license, metallic tag or other Municipal Identification than that issued by the Municipal Clerk for dogs, nor shall the owner, keeper, or harbinger wrongfully and knowingly license an un-spayed or un-neutered dog with a license prescribed for a neutered or spayed dog.
- §6-104** **DOGS; OWNER DEFINED.** Any person who shall harbor or permit any dog to be for ten (10) days or more in or about his or her house, store, or enclosure, or to remain to be fed, shall be deemed the owner and possessor of such dog and shall be deemed liable for all penalties herein prescribed. (Ref. 54-606, 71-4401 RS Neb.)
- §6-105** **DOGS; PROCLAMATION.** It shall be the duty of the Governing Body whenever in its opinion the danger to the public safety from rabid dogs is great or imminent, to issue a proclamation ordering all persons owning, keeping, or harboring any dog to muzzle the same, or to confine it for a period of not less than thirty (30) days or more than ninety (90) days from the date of such proclamation, or until such danger is passed. The dogs may be harbored by any good and sufficient means in a house, garage, or yard on the premise wherein the said owner may reside. Upon issuing the proclamation it shall be the duty of all persons owning, keeping, or harboring any dog to confine the same as herein provided.
- §6-106** **DOGS; UN-COLLARED.** All dogs found running at large upon the streets and public grounds of the Municipality without a collar or harness are hereby declared a public nuisance. Un-collared dogs found running at large may be killed by the Municipal Police. (Ref. 54-604 RS Neb.)
- §6-107** **DOGS; RUNNING AT LARGE.** It shall be unlawful for the owner of any dog, whether licensed or unlicensed, to allow such dog to run at large in the Municipality. "Running at Large" shall mean any dog found off the premise of the owner, and not under control of the owner or a responsible person, either by leash, cord, chain, wire, rope,

cage or other suitable means of physical restraint.

§6-107.01 DOGS; IMPOUNDMENT FEES WHEN DOGS LICENSED OR UNLICENSED ARE IMPOUNDED. Impoundment of dogs within the City of David City, Nebraska, shall be accomplished by the Municipal Police or person designated by the Mayor when found "running at large." There shall be a boarding fee for each day the dog is impounded by the City, which shall be the responsibility of the owner. In addition there shall be a general impoundment fee of five dollars (\$5.00) for the first impoundment of a dog during any license year; then ten dollars (\$10.00) for the second impoundment during any license year; fifteen dollars (\$15.00) for the third impoundment during any license year.

All such fees, together with proof that a dog is licensed in accordance with the provisions of this Chapter, before any dog is released. When all fees have been paid to the City, the dog may be returned to the owner.

§6-108 DOGS; CAPTURE IMPOSSIBLE. The Municipal Police shall have the authority to kill any animals showing vicious tendencies, or characteristics of rabies which make capture impossible because of the danger involved. (*Ref. 54-605 RS Neb.*)

§6-109 DOGS; VICIOUS. It shall be unlawful for any person to own, keep, or harbor any dog of a dangerous or ferocious disposition that habitually snaps or manifests a disposition to bite. If any vicious or dangerous dog is allowed to run at large, the Municipal Police shall have the authority to put the dog to death. Upon the complaint of one (1) or more affected persons, filed with the Municipal Police Department, that any dog owned by the person named in the complaint is committing injury to persons or property, or is an annoyance, dangerous, offensive or unhealthy, the Municipal Police Department shall investigate the complaint and, if in their opinion the situation warrants, shall notify the owner to dispose of the dog. If the Municipal Police Department is unable to locate the owner of the dog, or if the owner of the dog fails to restrain such dog, the Municipal Police Department shall take custody of the dog, and impound said dog. The owner of the dog shall be required to pay impoundment fees as set forth in Municipal Code 6-107.01, before the dog will be released.

§6-110 DOGS; INTERFERENCE WITH POLICE. It shall be unlawful for any person to hinder, delay, or interfere with any Municipal Policeman who is performing any duty enjoined upon him by the provisions of this Article. (*Ref. 28-729 RS Neb.*)

§6-111 DOGS; KILLING AND POISONING. It shall be unlawful to kill, or to administer, or cause to be administered, poison of any sort to a dog, or in any manner to injure, maim, or destroy, or in any manner attempt to injure, maim, or destroy any dog that is the property of another person, or to place any poison, or poisoned food where the same is accessible to a dog.

§6-112 DOGS; BARKING AND OFFENSIVE. It shall be unlawful for any person to own, keep, or harbor any dog which by loud, continued, or frequent barking, howling, or yelping shall annoy or disturb any person or neighborhood, or which habitually barks at or chases pedestrians, drivers, or owners of horses or vehicles while they are on any public sidewalks, streets, or alleys in the Municipality. Upon the complaint of one (1) or more affected persons from different households, that any dog owned by the

person named in the complaint is an annoyance or disturbance, or otherwise violates the provisions of this section of the Municipal Code, the Police shall investigate the complaint and, if in the opinion the situation warrants, shall notify the owner to silence and restrain such dog. If the Police Department is unable to locate the owner of the dog, or if the owner of the dog fails to silence and restrain such dog, the Police Department may take custody of the dog, and impound such dog. The owner of the dog shall be required to pay impoundment fees as set forth in Municipal Code 6-107.01, before the dog will be released.

§6-113 DOGS; LIABILITY OF OWNER. It shall be unlawful for any person to allow a dog owned, kept, or harbored by him, or under his charge or control, to injure or destroy any real or personal property of any description belonging to another person. The owner or possessor of any such dog, in addition to the usual judgment upon conviction, may be made to be liable to the persons so injured in an amount equal to the value of the damage so sustained. (*Ref. 54-601, 54-602 RS Neb.*)

§6-114 DOGS; REMOVAL OF TAGS. It shall be unlawful for any person to remove or cause to be removed, the collar, harness, or metallic tag from any licensed dog without the consent of the owner, keeper, or possessor thereof.

Article 2. Animals Generally

§6-201 ANIMALS; RUNNING AT LARGE. It shall be unlawful for the owner, keeper, or harbinger of any animal, or any person having the charge, custody, or control thereof, to permit a horse, mule, cow, sheep, goat, swine, or other animal to be driven or run at large on any of the public ways and property, or upon the property of another, or to be tethered or staked out in such a manner so as to allow such animal to reach or pass into any public way.

§6-202 ANIMALS; CRUELTY. No person shall cruelly or unnecessarily beat, overwork, or insufficiently shelter or feed any animal within the Municipality.

§6-203 ANIMALS; KILLING AND INJURING. No person shall kill or injure any animal by the use of firearms, stones, clubs, poisons, or any other manner unless the animal is vicious or dangerous and cannot be captured without danger to the persons attempting to effect a capture of the said animal. (*Ref. 28-1001, 28-1002 RS Neb.*)

§6-204 ANIMALS; ENCLOSURES. All pens, cages, sheds, yards, or any other area or enclosure for the confinement of animals and fowls not specifically barred within the corporate limits shall be kept in a clean and orderly manner so as not to become a menace or nuisance to the neighborhood in which the said enclosure is located.

§6-205 FOWLS; RUNNING AT LARGE. It shall be unlawful for any person to allow poultry, chickens, turkeys, geese, or any other fowls to run at large within the corporate limits, except in enclosed places on private property. (*Ref. 17-547 RS Neb.*)

§6-206 ANIMALS; PROHIBITED WITHIN THE CORPORATE LIMITS. It shall be unlawful for the owner, keeper, or harbinger of any livestock, namely cows, horses, sheep, goats, swine or mules, to keep such livestock within the corporate limits of the City of

David City, Nebraska, except as provided herein. All properties, within the corporate limits, where any of the above listed livestock are being kept at the time of the passage of this ordinance, shall be permitted to continue to keep livestock.

Article 3. Miscellaneous Misdemeanors

- §6-301 **MISDEMEANORS; IMPERSONATING AN OFFICER.** It shall be unlawful for any person other than a Municipal or State Police Officer to wear an official badge or uniform, or to falsely and willfully impersonate the said officials. (Ref. 28-608, 28-609, 28-610 RS Neb.)
- §6-302 **MISDEMEANORS; RESISTING OFFICER.** It shall be unlawful for any person to resist any Municipal Officer when lawfully requested to do so by him. Any person who refuses to assist an officer when lawfully requested to do so shall be fined in any amount not exceeding fifty (\$50.00) dollars. (Ref. 28-904 to 28-906 RS Neb.)
- §6-303 **MISDEMEANORS; ABUSING OFFICER.** It shall be unlawful for any person to abuse a police officer or Municipal official in the execution of his office. (Ref. 28-929, 28-931, 28-931.01 RS Neb.)
- §6-304 **MISDEMEANORS; TRESPASSING.** It shall be unlawful for any person to trespass upon any private grounds within the Municipality, or to break, cut, or injure any tree, shrub, plant, flower, or grass growing thereon, or without the consent of the owner or occupant to enter upon an improved lot or grounds occupied for residence purposes and to loiter about the same. (Ref. 28-550 to 28-522 RS Neb.)
- §6-305 **MISDEMEANORS; MALICIOUS DESTRUCTION OF PROPERTY.** It shall be unlawful for any person within the corporate limits to purposely, willfully, or maliciously injure in any manner, or destroy real or personal property of any description belonging to another. (Ref. 28-519 RS Neb.)
- §6-306 **MISDEMEANORS; LARCENY.** It shall be unlawful for any person within the corporate limits to steal any money, goods, or chattels of any kind whatever. Any person who shall steal property of any kind, whether the same be entirely in money or entirely property of the value of two hundred (\$200.00) dollars or less shall be deemed to be guilty of a misdemeanor. (Ref. 28-512, 28-514 RS Neb.)
- §6-307 **MISDEMEANORS; INJURY TO TREES.** It shall be unlawful for any person to purposely or carelessly, and without lawful authority, cut down, carry away, injure, break down, or destroy the fruit of any trees planted or growing in the corporate limits. Any public service company desiring to trim or cut down any tree, except on property owned and controlled by them, shall make an application to the Governing Body to do so, and the written permit of the Governing Body in accordance with their decision to allow such an action shall constitute the only lawful authority on the part of the company to do so.
- §6-308 **MISDEMEANORS; FIRE EQUIPMENT.** It shall be unlawful for any person who is not an active member of the Fire Department to deface, destroy, handle, or loiter about the equipment and property of the Fire Department.

- §6-309 **MISDEMEANORS; FIRE HOSE.** It shall be unlawful for any person, without the consent of the Fire Chief, or the Assistant Fire Chief to drive any vehicle over the unprotected hose of the Fire Department at any time.
- §6-310 **MISDEMEANORS; DRINKING IN PUBLIC.** It shall be unlawful for any person to consume alcoholic beverages in the public streets, alleys, roads, highways, or upon any property owned by the Municipality or other governmental subdivision thereof, or inside vehicles while upon the public streets, alleys, roads, or highways, except when said consumption is in accordance with the provisions of the Nebraska Liquor Control Act and the licensing requirements of the State of Nebraska (*Ref. 53-186, 53-186.01 RS Neb.*)
- §6-311 **MISDEMEANORS; MINOR IN POSSESSION.**
Except as provided in Section 53-168.06, no minor may sell, dispense, consume, or have in his or her possession or physical control any alcoholic liquor in any tavern or in any other place, including public streets, alleys, roads, or highways, upon property owned by the State of Nebraska or any subdivision thereof, or inside any vehicle while in or on any other place, including, but not limited to, the public streets, alleys, roads, or highways, or upon property owned by the State of Nebraska or any subdivision thereof, except that a minor may consume, possess, or have physical control of alcoholic liquor in his or her permanent place of residence or on the premises of a place of religious worship on which premises alcoholic liquor is consumed as a part of a religious rite, ritual, or ceremony
- The governing body shall have the power to, and may by applicable resolution or ordinance, regulate, suppress, and control the transportation, consumption, or knowing possession of or having under his or her control beer or other alcoholic liquor in or transported by any motor vehicle, by any person under twenty-one years of age, and may provide penalties for violations of such resolution or ordinance.
- §6-312 **MISDEMEANORS; POSTED ADVERTISEMENTS.** It shall be unlawful for any person to wrongfully and maliciously tear, deface, remove, or cover up the posted advertisement or bill of any person, firm, or corporation when said bill or advertisement is rightfully and lawfully posted, and the same remains of value.
- §6-313 **MISDEMEANORS; POSTING.** It shall be unlawful for any person to post, paste, or paint any sign, advertisement, or other writing of any nature upon a fence, pole, building, or other property without the written permission of the owner of the said property.
- §6-314 **MISDEMEANORS; DISCHARGE OF FIREARMS.** It shall be unlawful for any person, except an officer of the law in the discharge of his official duty, to fire or discharge any gun, pistol, or other fowling piece within the Municipality; provided, nothing herein shall be construed to apply to officially sanctioned public celebrations if the persons so discharging firearms have written permission from the Governing Body. (*Ref. 17-556, 28-1239.01, 28-1252 RS Neb.*)
- §6-315 **MISDEMEANORS; CONCEALED WEAPONS.** It shall be unlawful for any person or

persons to carry about their person any concealed pistol, revolver, knife, billy club, sling-shot, metal knuckles, or other dangerous weapon of any kind. Nothing herein shall be construed to apply to the Municipal Police. (*Ref. 28-1202, 28-1204 RS Neb.*)

§6-316 **MISDEMEANORS; SLINGSHOTS, AIR GUNS, BB GUNS.** It shall be unlawful for any person to discharge a slingshot, air gun, BB gun, paint ball gun, or the like, loaded with rock or other dangerous missiles at any time or under any circumstances within the Municipality.

§6-317 **MISDEMEANORS; FIRECRACKERS.** It shall be unlawful for any person to ignite or cause to be exploded fireworks or firecrackers 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, lady fingers, not exceeding seven-eighths inch ($\frac{7}{8}$ ") in length or one-eighth inch ($\frac{1}{8}$ ") in diameter, and which do not contain more than one-half ($\frac{1}{2}$) grain each in weight of explosive material. (*Ref. 28-1242 to 28-1250 RS Neb.*)

§6-318 **MISDEMEANORS; ASSAULTS.** It shall be unlawful for any person to assault or threaten any other person or persons. Any person who assaults another person or persons shall be deemed to be guilty of a misdemeanor.

§6-319 **MISDEMEANORS; PROVOKING ASSAULT.** It shall be unlawful for any person or persons within the Municipality to intentionally provoke or attempt to provoke an assault upon himself or another by the uttering of insulting words, cursing and swearing, or to use slander against any other person. Upon conviction a fine not to exceed ten dollars (\$10.00) shall be assessed.

§6-320 **MISDEMEANORS; MENACING THREATS.** It is hereby declared unlawful for any person within the corporate limits of this Municipality to assault or threaten another in a menacing manner or strike or injure another.

§6-321 **MISDEMEANORS; ASSAULT AND BATTERY.** It shall be unlawful for any person to assault, threaten, strike, or injure any other person or persons. Any person who assaults or batters another person or persons shall be deemed to be guilty of a misdemeanor. (*Ref. 28-309, 28-310, 28-393 RS Neb.*)

§6-322 **MISDEMEANORS; DISTURBING THE PEACE.** It shall be unlawful for any person or persons to assemble or gather within the Municipality with the intent to do an unlawful or disorderly act or acts, by force or violence against the Municipality, or resident therein, or who shall disturb the public peace, quiet, security, repose, or sense of morality. Any person or persons so assembled or gathered shall be deemed to be guilty of a misdemeanor. (*Ref. 28-1322, 55-474 RS Neb.*)

§6-323 **MISDEMEANORS; DISORDERLY CONDUCT.** Any person who shall knowingly start a fight, fight, commit assault or battery, make unnecessary noise, or otherwise conduct themselves in such a way as to breach the peace shall be deemed to be guilty of a misdemeanor. (*Ref. 17-129, 17-556 RS Neb.*)

- §6-324 **MISDEMEANORS; LITTERING.** It shall be unlawful for any person to drop, or cause to be left, upon any municipal highway, street, or alley, except at places designated by the Governing Body, any rubbish, debris, grass, leaves, or waste, and any person so doing shall be guilty of littering. (*Ref. 39-683, 28-523 RS Neb.*)
- §6-325 **MISDEMEANORS; PROHIBITED FENCES.** It shall be unlawful for any person to erect, or cause to be erected, and maintain any barbed wire or electric fence within the corporate limits.
- §6-326 **MISDEMEANORS; APPLIANCES IN YARD.** (1) It shall be unlawful for any person to permit a refrigerator, icebox, freezer, stove, range, clothes washing machine, clothes dryer, dish washing machine, or any other dangerous appliance to be in the open and accessible to children whether on private or public property and possession of the same shall be deemed a nuisance.
(2) Upon the report being received by a City employee of a refrigerator, icebox, freezer or any other dangerous appliance being in the open and accessible to children, whether on private or public property, or, upon observation by a police officer of a refrigerator, icebox, freezer, stove, range, clothes washing machine, clothes dryer, dish washing machine, or any other dangerous appliance being in the open and accessible to children, whether on private or public property, the police Department shall serve notice to the owner of said refrigerator, icebox, freezer, or any other dangerous appliance to remove same within five (5) days. In the event that the refrigerator, icebox, freezer, stove, range, clothes washing machine, clothes dryer, dish washing machine, or other dangerous appliance is not removed within the five (5) days, the City will remove or cause to be removed said appliance(s) and assess the expense of the removal to the owner of said appliance(s). (*Ref. 17-563, 18-1720 RS Neb.*)
- §6-327 **MISDEMEANORS; OBSTRUCTION OF PUBLIC.** It shall be unlawful for any person to erect, maintain, park, or suffer to remain on any street, alley, or public sidewalk a stand, wagon, display, or other obstruction inconvenient to, or inconsistent with, the public use of the same.
- §6-328 **MISDEMEANORS; OBSTRUCTING WATER FLOW.** It shall be unlawful for any person to stop or obstruct the passage of water in a street gutter, culvert, water pipe, or hydrant.
- §6-329 **MISDEMEANORS; REMOVING DIRT.** It is hereby declare unlawful for any person to remove, disturb, or take away from any street, alley, or public grounds any dirt, earth, stones, or other materials forming a part of such street, alley, or public grounds without first having obtained written permission to do so from the Governing Body.
- §6-330 **MISDEMEANORS; WEED REMOVAL.** It shall be the duty of every owner of real estate in the Municipality to cut and clear such real estate, together with one-half (½) of the streets and alleys abutting thereon, of all grass, weeds and worthless vegetation that are noxious, obstruct travel on public ways, or create a fire or health hazard. Such grass, weeds and worthless vegetation shall be cut so as not to extend more than twelve inches (12") above the ground. Subsequent to the cutting of the said grass and weeds, all loose vegetation shall be immediately removed.

Upon the failure of the owner, lessee, or occupant having control of any real estate to cut and clear the said grass, weeds and worthless vegetation as set forth hereinbefore, the Municipal Police shall serve notice on the said owner, lessee, or occupant to do so. In the event that the grass, weeds and vegetation have not been removed after a period of five (5) days, the Governing Body may order the same to be done under the direction of the Street Department, and the cost thereof shall be chargeable to the property owner. If the owner fails to reimburse the Municipality after being properly billed, the cost may be assessed against the real estate and the Governing Body shall have the assessment certified to the County Treasurer and the same shall be collected in the manner provided by law. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (*Ref. 17-563, 18-1719 RS Neb.*)

§6-331 **MISDEMEANORS; ABANDONED AUTOMOBILES.** It shall be unlawful to abandon any automobile on the Municipal Streets, highways, alleys, parks or other property. An automobile shall be deemed to be abandoned if left unattended for more than six (6) hours on any public property without current license plates; for more than twenty-four (24) hours on any public property, except where parking is legally permitted, for more than forty-eight (48) hours after the parking of such vehicle shall have become illegal; and for more than seven (7) days on private property if left initially without the permission of the owner, or after the permission of the owner shall have been terminated. Any automobile so abandoned shall immediately become the property of the Municipality if the automobile is unlicensed and if, in the estimation of the Municipal Police, the said automobile is of a wholesale value of one hundred dollars (\$100.00) or less. In the event the automobile is licensed or is of an estimated value of over one hundred dollars (\$100.00), the Municipal Police shall make a reasonable effort to contact the owner of the said automobile by sending a notice to the registered owner, if known; by sending an inquiry to the County it is registered in, if the owner is unknown; or by contacting the Director of Motor Vehicles, if the car is without license plates and the owner is unknown. If the owner is known, and does not claim the automobile within five (5) days after the date when the notice was mailed, or upon receiving word from the Director of Motor Vehicles that the owner is unknown, title will immediately vest in the Municipality and the automobile may be sold. Any proceeds from the sale of the automobile less any expenses incurred by the Municipality in such sale shall be held without interest for the benefit of the owner of such vehicle for a period of two (2) years. If not claimed within such period of time, the proceeds shall then be paid into the General Fund.

Any person who abandons an automobile as hereinbefore defined shall be deemed to be guilty of a misdemeanor. (*Ref. 50-1901 through 60-1911 RS Neb.*)

§6-332 **MISDEMEANORS; UNLICENSED OR INOPERABLE VEHICLES.** No person in charge or control of any property within the Municipality, other than Municipal property, whether as owner, tenant, occupant, lessee, or otherwise, shall allow any unlicensed, partially dismantled, wrecked, junked, inoperable or discarded vehicle to remain on property longer than seven (7) days; sixty (60) days for businesses;

provided this section shall not apply to a vehicle in an enclosed building; a vehicle legally in transit; or to a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the Municipality. Licensed car dealers are exempt from licensing new or used vehicles being held for resale. Any vehicle allowed to remain on property in violation of this section shall constitute a nuisance and shall be abated, and any person violating this section shall be guilty of a misdemeanor.

Article 4. Penal Provisions

§6-401 **VIOLATION; PENALTY.** Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred dollars (\$100.00) for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

§6-402 **ABATEMENT OF NUISANCE.** Whenever a nuisance exists as defined in this Chapter, the Municipality may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law.

Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as part of the judgement in the case. (Ref. 18-1720, 18-1722 RS Neb.)

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

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

Passed and approved this 10th day of November, 2004.

(Seal)

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Kirby had requested that excused absences be added to the ordinance relating to compensation for elected officials. City Attorney researched this and provided the following:

Egr and Birkel, P.C. Attorneys at Law 465 - 4th St. James M. Egr
Box 46 Phone: 402-367-3139 James L. Birkel
City, NE 68632 FAX: 402-367-3900
egr-birkel@navix.net

P.O.
David

October 21, 2004

Joan Kovar
City Office
P.O. Box 191
David City Nebraska 68632

Re: 10/15/04 Fax on City Council

Salary issues

Dear Joan,

I am in receipt of your October 15, 2004 FAX. I have researched Section 17-612 of the Revised Statutes of Nebraska, Reissue of 1997 and make the following comments:

- (1) The above referenced Statute says that "...during the term " of the elective officer the salary cannot be increased to be effective for THAT elective term. Simply put, during the term of office the City Council CANNOT increase or decrease the salaries of the Council persons FOR THAT SPECIFIC TERM; they CAN increase or decrease the salary to be effective for the NEXT term, but MUST DO SO BEFORE the new term starts.
- (2) The above referenced Statute addresses so-called "staggered" terms, which means the "...terms of one or more members commence and end at DIFFERENT (my emphasis) times, ". This reference is put in as an EXCEPTION because with staggered term you could have different salaries.
- (3) The above referenced Statute DOES ALLOW salary changes up or down "...at the beginning of the full term of ANY MEMBER (my emphasis) thereof. " This simply means that BEFORE the term of any one (1) or more Council persons starts after an election the Council CAN increase or change the salary to BE EFFECTIVE FOR ALL WITH THE START ON THE NEW TERM. Outgoing has NOTHING to do with a decision to raise or lower the salary; the term of office controls!
- (4) City Councils CAN increase their own pay; there is NO Statute that says otherwise. The above referenced Statute addresses how the Council and when the Council increases or decreases the salary for its members and the effective date of the same, which MUST be the next term.
- (5) The increase of salary for ALL Councilpersons to be effective for the NEXT TERM could be done at the November, 2004 Council meeting so long as the term starts AFTER the November, 2004. Council meeting AND the effective date is the NEW TERM.
- (6) I am sorry to say that I DO NOT find a Nebraska Statute (I could be wrong, but my research DOES NOT SHOW ONE) that requires a minimum number of attendances at meetings.

(7) I am sorry to also say that I find NO statute that gives the Council the authority to deny pay because of missing meetings or having excused or unexcused absences. It would create havoc for Councilpersons not to attend because you would have quorum questions and questions in passing resolutions or ordinances! My research has NOT shown any Nebraska Statute dealing with the authority requested.

(8) There IS, however, a Nebraska Statute dealing with missing too many meetings. The Statute is Section 19-3101, 2002 Cumulative Supplement states, that "...a vacancy on the city council or board of trustees shall exist if a member is absent from more than five consecutive regular meetings of the council or board unless the absences are excused by a majority vote of the remaining members". There IS NOTHING that allows denying pay; nothing dealing with excused or unexcused absences; and nothing about the number, other than stated in the aforesaid Statute.

(9) I do not know if I can as City Attorney recommend language about excused absences, the number of excused absences allowed, or even to have the language that now exists in Section 1-903 of the Ordinances. I know what I say sounds pretty poor for the City Attorney because we have been going through the Ordinances in updating them and maybe, I should have said something but to be quite honest, I never researched the issue of denying pay or getting pay based upon attendance and excused or unexcused absences. Sorry!

I did visit with Gary Krumland of the League of Nebraska Municipalities on October 20, 2004 and he confirmed the contents of this letter.

Should you have further questions, please do not hesitate to contact me.

Sincerely,
James M. Egr

JME/b

Since City Attorney Egr explained that no statute gives the Council the authority to deny pay because of missing meetings or having excused or unexcused absences, the ordinance will have to be amended - not by adding a section allowing for excused absences from City Council meetings with pay, but to delete the section stating "The Mayor and/or Council members shall be allowed to miss one (1) meeting per year and receive the established pay for the meeting so missed". As it was not worded this way on the agenda, Council member Kirby made a motion to table consideration of amending the ordinance relating to compensation for elected officials to the December 8th council meeting. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA TO AMEND SECTION 1-903 OF THE MUNICIPAL CODE OF THE CITY OF DAVID CITY, NEBRASKA, RELATING TO COMPENSATION FOR ELECTED OFFICIALS; REPEAL ALL ORDINANCES OR PORTIONS OF ORDINANCES IN CONFLICT THEREWITH; TO PROVIDE FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; 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. That Section 1-903 of the Municipal Code be amended to read as follows:

1-903 COMPENSATION: SALARIES OF ELECTED OFFICIALS. The salaries of the elected officials of the Municipality of David City are hereby fixed as follows:

Mayor -

Three hundred dollars (\$300.00) for each regular meeting(s) attended.
One hundred fifty dollars (\$150.00) for each special meeting(s) attended.

Council members -

Two hundred twenty-five dollars (\$225.00) for each regular meeting(s) attended.
One hundred twelve dollars and fifty cents (\$112.50) for each special meeting(s) attended.

~~The Mayor and/or Council members shall be allowed to miss one (1) meeting per year and receive the established pay for the meeting so missed.~~

SECTION 2. 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, is hereby repealed.

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

PASSED AND APPROVED this _____ day of _____, 2004.

 Tabled
Mayor Stephen Smith

 Tabled
City Clerk Joan E. Kovar

Council member Kirby introduced Ordinance No. 986. Council member Hein made a motion to pass Ordinance No. 986 on the first reading only. Council member Lukassen seconded the motion. Voting YEA: Council members Kirby, Smith, Schatz, Lukassen, and Hein. Voting NAY: Council member Kroesing. The motion carried and Ordinance No. 986 was passed on first reading only as follows:

ORDINANCE NO. 986 AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA PROHIBITING PRIVATE POSSESSION OR SALE OF EXOTIC ANIMALS, PROVIDING AN EFFECTIVE DATE, AND PROVIDING 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 Intent It is the intent of the City of David City to protect the public against health and safety risks that exotic animals pose to the community and to protect the welfare of the individual animals held in private possession. Exotic animals are wild and potentially dangerous in a captive environment.

Section 2 Definitions

A. "Animal control authority" means any agency designated by the mayor and city council responsible for animal control. B. "Exotic animal" means those species of animals that are wild by nature, including any or all hybrids, which, because of habitat, mode of life, or natural instinct, are incapable of being completely domesticated, and require the exercise of art, force, or skill to keep them in subjection, whether bred in the wild or in captivity. Examples of wild or exotic animals include, but are not limited to hawks, owls, mink, monkeys, deer, skunks, alligators, crocodiles, caimans, raccoons, opossums, any cat not a member of the family felis domestica, including, but not limited to, tigers, lions, panthers, and lynxes, and any dog not a member of the family canis familiaris, including, but not limited to, wolves, foxes, and coyotes. All venomous snakes and non-venomous snakes including but limited to Paupan python, Peruvian black-tailed boa, Guyana red-tailed boa, Suriname red-tailed boa, argentine boa, green anaconda, yellow anaconda, oenpelli python, amethystine python, bar-neck amethystine python, boelens python, Burmese python, tiger reticulated python dwarf reticulated python and African rock python. Also included as an exotic animal are the following types of lizards: gila monster, Mexican beaded lizard, Bengal monitor, gray's monitor, blackthroat monitor, gould's/sand monitor, Nile monitor, green iguana, water monitor, lace monitor.

C. "Domestic Animal" means any of various animals domesticated by people to live and breed in a tame condition and shall include, but not be limited to dogs, ferrets, guinea pigs, rabbits and gerbils.

D. "Person" means any individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate or any other legal entity, and any officer, member, shareholder, director, employee, agent or representative thereof. E. "Possessor" means any person who owns, possesses, keeps, harbors, brings into the state, has in one's possession, acts as a custodian, or has custody or control of a exotic animal. F. "Wildlife sanctuary" means a non-profit organization described in Section 170(b)(1)(A)(vi), Internal Revenue Code 1986, and its subsequent amendments, that operates a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced exotic animals are provided care for their lifetime or released back to their natural habitat and, with respect to any animal owned by the organization, does not: conduct any activity that is not inherent to the animal's nature; use the animal for any type of entertainment; sell, trade or barter the animal or the animal's body parts; or breed the animal for any purpose.

Section 3 Keeping of Exotic Animals Prohibited A. It shall be unlawful for any person within the corporate limits of the city to own, sell, possess, keep, harbor, bring into the city, have in one's possession, act as a custodian, or have custody or control of an exotic animal, except in compliance with this act.

B. It shall be unlawful for a person to breed an exotic animal.

Section 4 Exemptions A. The provisions of this act shall not apply to: Licensed Zoos and Aquariums. Duly incorporated non-profit animal protection organizations. Animal control or law enforcement agencies or officers. Licensed veterinary hospitals or clinics. Any wildlife sanctuary as defined under this act. Any licensed or accredited research or medical institution. Any licensed or accredited educational institution. Any lawfully operated circus or rodeo. Any person exempted by Nebraska law consistent with Sec. 37 of the Neb. Rev. Stats. Section 5 Enforcement of Article The city animal control authority, its

staff, its agents, any city, county or state law enforcement officer, are authorized and empowered to enforce the provisions of this ordinance. Section 6 Inspection The possessor of an exotic animal consistent with this act, at all reasonable times, shall allow the animal control authority, its staff, and its agents to enter the premises where the animal is kept to ensure compliance with this act. Section 7 Confiscation and Disposition of Exotic Animals A. The animal control authority or law enforcement officer may immediately confiscate any exotic animal if the animal is kept in contravention of this act. The possessor is liable for the costs of placement and care for the exotic animal from the time of confiscation until the time of return to the possessor or until the time the animal has been relocated to an approved facility. B. If an exotic animal is confiscated due to the animal being kept in contravention of this act, the possessor must post a security bond or cash with the animal control authority in an amount sufficient to guarantee payment of all reasonable expenses expected to be incurred in caring and providing for the animal, including but not limited to the estimated cost of feeding, medical care, and housing for at least thirty (30) days. The security bond or cash shall not prevent the animal control authority from disposing of the animal at the end of the thirty (30) days unless the person claiming the animal posts an additional security bond or cash with the animal control authority to secure payment of all reasonable expenses expected to be incurred in caring and providing for the animal for an additional thirty (30) days, and does so prior to the expiration of the first thirty (30) day period. The amount of the security bond or cash shall be determined by the animal control authority and based on the current rate to feed, provide medical care, and house the animal. C. If a confiscated animal possessor cannot be located or if a confiscated animal remains unclaimed, in the discretion of the animal control authority, the animal control authority may contact an approved facility and allow the animal to be adopted by an authorized person or facility or may euthanize the animal. D. If the exotic animal cannot be taken up or recaptured safely by the animal control authority or if proper and safe housing cannot be found the animal control authority may immediately euthanize the animal. E. An exotic animal may be returned to the possessor only if, to the satisfaction of the animal control authority, the possessor is exempt from this act or has a legal possession permit, has corrected the conditions resulting in the confiscation, and has paid the cost of placement and care of the animal while under the care and control of the animal control authority. Section 8 Penalties A. Any person, upon violation of the provisions of this ordinance, who shall fail, neglect, or refuse to comply with any of the provisions of this section shall be in violation of this ordinance and upon conviction thereof, shall be fined as follows:

First violation	\$25.00 fine; forfeiture of animal
Second violation	\$50.00 fine; forfeiture of animal
Third violation	\$75.00 fine; forfeiture of animal
Fourth violation	\$100.00 fine; forfeiture of animal

Section 9 Severability

If any part of this act is found to be unconstitutional or unenforceable it shall not affect the constitutionality or enforce ability of any other part. Any other ordinance or section passed and approved prior to passage, approval, and publication or this ordinance and in conflict with its provisions is repealed. Section 10 Passage 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 _____, _____.

(Seal)

Passed on 1st reading only 11/10/04
Mayor Stephen Smith

Passed on 1st reading only 11/10/04
City Clerk Joan E. Kovar

Council member Kirby made a motion to go into executive session to discuss a personnel/personal issue. Council member Hein seconded the motion. Voting YEA: Council members Lukassen, Schatz, Kroesing, Smith, Kirby, and Hein. Voting NAY: none. The motion carried. The Mayor and City Council went into executive session at 9:10 p.m. accompanied by City Administrator Fiegenschuh, City Attorney Egr, Police Chief Sunday, and City Clerk Kovar.

Council member Kirby made a motion to come out of executive session. Council member Hein seconded the motion. Voting YEA: Council members Smith, Schatz, Lukassen, Kroesing, Kirby, and Hein. Voting NAY: none. The motion carried and the Mayor and Council came out of executive session at 9:28 p.m..

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 Schatz, Kroesing, Smith, Lukassen, Hein, and Kirby. Voting NAY: None. The motion carried and Mayor Smith declared the meeting adjourned at 9:30 p.m..

Mayor Stephen Smith

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES
November 10, 2004

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do

hereby certify with regard to all proceedings of November 10, 2004; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Joan E. Kovar