

## CITY COUNCIL PROCEEDINGS

December 12, 2007

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

Present for the meeting were: Mayor Dana Trowbridge, Council members Gary Smith, Bill Scribner, Nick Hein, Ted Lukassen, and Bill Schatz, City Administrator Joe Johnson, City Attorney Jim Egr, and City Clerk-Treasurer Joan Kovar. A vacancy exists for Council member 1<sup>st</sup> Ward.

Also present were: Electric Supervisor Tim Kovar, Electric Plant Supervisor John Kabourek, WA/SE Supervisor Jim Kruse, Zoning Administrator Roger Kotil, Jerry Kosch, Pam Kabourek, Attorney Robert Bierbower, Jim Redler, Sam Armstrong, Tom Hamling, Alan Zavodny, Bill Yindrick, Pam Siroky of Agency One Insurance, and Banner Press Editor Larry Peirce.

The meeting opened with the Pledge of Allegiance.

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

The minutes of the November 1<sup>st</sup>, 2007 meeting of the Mayor and City Council were approved upon a motion by Council member Hein and seconded by Council member Lukassen. Voting AYE: Council members Schatz, Scribner, Smith, Lukassen, and Hein. Voting NAY: None. The motion carried.

The minutes of the November 14<sup>th</sup>, 2007 meeting of the Mayor and City Council were approved upon a motion by Council member Lukassen and seconded by Council member Hein. Voting AYE: Council members Schatz, Scribner, Smith, Hein, and Lukassen. Voting NAY: None. The motion carried.

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

Jim Redler, 801 Park Drive, stated that there are no handrails or railing supports for the elderly who attend football games at the football field in the City Park. It is difficult for the elderly to walk up and down the steps when going to get a seat to watch a football game without some type of handicapped rail supports. Jim has \$500 from each school (Aquinas and David City Public Schools) but thought that before he proceeds further he should get approval from the Mayor and City Council to raise funds, design the railings, and to begin work on this project. The Council felt that it was a good idea, however, since this item was not on the agenda the

Council could not take action. City Administrator Johnson stated that this request should go before the Park Committee and then the City Council for consideration.

Pam Siroky of Agency One Insurance presented a dividend check from EMC Insurance Companies in the amount of \$8,571.04 for the 2006-2007 term. The dividend is based on the Workman Compensation and the General Liability.

Mayor Trowbridge asked for consideration of claims. Mayor Trowbridge stated that the police department picks up dogs running at loose and takes them to Veterinarian Randy Schawang. The dog is kept for five days and then if not claimed, they are killed. The City pays this cost. Mayor Trowbridge stated that five days is not a very long time. He questioned if there wasn't someone in the public who would like to take care of the dogs, find them a home, or make it a cooperative effort and work with the Humane Society.

Council member Smith made a motion to authorize the payment of claims. Council member Hein seconded the motion. Voting AYE: Council members Lukassen, Scribner, Schatz, Hein, and Smith. Voting NAY: None. The motion carried.

Mayor Trowbridge called for Committee and Officers' Reports in addition to those written reports contained in the Agenda packet. There were no additional reports.

Mayor Trowbridge scheduled a Committee of the Whole meeting for Monday, December 17<sup>th</sup>, 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 Lukassen seconded the motion. Voting AYE: Council members Schatz, Smith, Scribner, Lukassen, and Hein. Voting NAY: None. The motion carried.

Council member Schatz made a motion to advance to agenda item #11 - Presentation by and consideration of approving an agreement with HWS Consulting regarding Airport Improvement Projects. Council member Hein seconded the motion. Voting AYE: Council members Smith, Lukassen, Scribner, Hein, and Schatz. Voting NAY: None. The motion carried.

Arnold Hottovy and Andrew Beil, HWS Consulting Representatives, made a presentation concerning the Airport Improvement Projects. They explained that runway 14/32 will be widened from 50' to 60'. Five foot (5') of asphalt will be added to each side of the runway. Also the same runway (14/32) will be lengthened by 575'. The existing runway is 3100' x 50' and it will be increased to 3675' x 60'. The Federal pays .95/\$ and the State pays .02/\$ so on the proposed \$810,000 project, (810,000 x .97 Federal and State = 785,700) the City's estimated cost will be \$24,300. They would like to open bids no later than late April so the grants can be written by May 1.

Council member Lukassen made a motion to authorize Mayor Trowbridge to execute an Agreement with HWS Consulting Group Inc. of Lincoln, Nebraska regarding Airport Improvement Projects. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Schatz, Hein, Smith, and Lukassen. Voting NAY: None. The motion carried.

CONSULTANT AGREEMENT  
FOR  
RUNWAY 14/32 WIDENING AND EXTENSION  
AT  
DAVID CITY MUNICIPAL AIRPORT  
DAVID CITY, NEBRASKA

Airport Improvement Program (AIP) Project No. 3-31-0025-04

(see attached)

Mayor Trowbridge declared the Public Hearing open at 7:30 p.m. to consider amending the 2007 - 2008 budget due to 1) grant funding for airport improvements, and 2) hail damage to city owned property. City Administrator Johnson explained that the City will spend \$810,000 on capital improvements at the Airport on Runway 14/32 expansion, and the City needs to budget for repairs to infrastructure damaged by a natural disaster (hail damage to city property) in the amount of \$70,814.80. There being no further comments Mayor Trowbridge closed the Public Hearing at 7:33 p.m.

Council member Schatz introduced Ordinance No. 1065 and moved to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Hein seconded the motion. Voting AYE: Council members Scribner, Lukassen, Smith, Hein, and Schatz. Voting NAY: None. The motion carried.

Council member Schatz made a motion to pass and adopt Ordinance No. 1065 on the third and final reading. Council member Hein seconded the motion. Voting AYE: Council members Lukassen, Scribner, Smith, Hein, and Schatz. Voting NAY: None. The motion carried and Ordinance No. 1065 was passed and adopted as follows:

**ORDINANCE NO. 1065**

**THE ANNUAL APPROPRIATION BILL**

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, ADOPTING THE AMENDED BUDGET STATEMENT TO BE TERMED THE ANNUAL APPROPRIATION BILL; TO APPROPRIATE SUMS FOR NECESSARY EXPENSES AND LIABILITIES; TO PROVIDE FOR THE REPEAL OF ANY ORDINANCE OR RESOLUTION IN CONFLICT THEREWITH; TO PROVIDE FOR AN EFFECTIVE DATE THEREOF; AND TO AUTHORIZE PUBLICATION IN PAMPHLET FORM.

WHEREAS, Nebraska Revised Statute 17-706 provides that a city council of the second class shall adopt a budget statement pursuant to the Nebraska Budget Act, to be termed "The Annual Appropriation Bill", in which corporate authorities may appropriate such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of city.

WHEREAS, Nebraska Revised Statute 13-511 provides that a city council may amend their previously adopted budget because of unanticipated circumstances. The unanticipated circumstances are: 1. the City of David City has received Federal Aviation Administration and Nebraska Department of Aeronautics grants in the amount of \$797,000 for airport improvements; and 2. the City of David City received \$70,814.80 from Berkshire Hathaway

Homestate Companies for hail damage caused to city owned property.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA, AS FOLLOWS:

SECTION 1. That after complying with all procedures required by law, the budget presented and set forth in the budget statement is hereby approved as the Annual Appropriation Bill for the fiscal year beginning October 1, 2007, through September 30, 2008. All sums of money contained in the budget statement are hereby appropriate for the necessary expenses and liabilities of the City of David City, Nebraska. A copy of the budget document shall be forwarded as provided by law to the Auditor of Public Accounts, State Capital, Lincoln, Nebraska, and to the County Clerk of Butler County, Nebraska, for use by the levying authority.

SECTION 2. That any ordinance or section of any ordinance passed and approved prior to or subsequent to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby appealed.

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

PASSED AND APPROVED this 12th day of December, 2007.

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Mayor Dana Trowbridge

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City Clerk Joan E. Kovar

(SEAL)

Council member Schatz introduced Ordinance No. 1066 and moved to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Lukassen, Hein, Smith, and Schatz. Voting NAY: None. The motion carried.

Council member Schatz made a motion to pass and adopt Ordinance No. 1066 on the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Scribner, Hein, Smith, and Schatz. Voting NAY: None. The motion carried and Ordinance No. 1066 was passed and adopted as follows:

**ORDINANCE NO. 1066**

AN ORDINANCE VACATING THE ALLEY BETWEEN LOTS 2, 3, & 6 AND LOTS 1, 4, & 5, IN BLOCK 3, MILES 1<sup>ST</sup> ADDITION, DAVID CITY, BUTLER COUNTY, NEBRASKA; PROVIDING FOR THE FILING OF CLAIMS AND ASCERTAINMENT OF ALL DAMAGES SUSTAINED BY THE CITIZENS OF SAID CITY OR BY THE OWNERS OF PROPERTY THEREIN; PROVIDING FOR THE RETENTION OF ANY UTILITY EASEMENTS; PROVIDING FOR AN EFFECTIVE DATE THEREOF, AND PROVIDING FOR PUBLICATION IN PAMPHLET FORM.

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

SECTION 1. The David City Elementary School was erected on Lots 3, 4, 5, & 6, Block 3, Miles 1<sup>st</sup> Addition to David City, Nebraska, and is situated directly on top of the alley.

SECTION 2. No records can be found that indicate that the alley located between Lots 2, 3, & 6 and Lots 1, 4, & 5, in Block 3, Miles 1<sup>st</sup> Addition to David City was ever vacated.

SECTION 3. The vacation of the Alley in Block 3, Miles 1<sup>st</sup> Addition to David City, Nebraska, is in the best interest of the City of David City, Nebraska

SECTION 4. The Alley in Block 3, Miles 1<sup>st</sup> Addition to David City, Nebraska, is hereby vacated.

SECTION 5. The City of David City, Nebraska, shall reserve in said alley utility easements for installing and/or maintaining all utilities in the alley herein vacated.

SECTION 6. That any citizen of the City or any owner of property therein may file a claim with the City Clerk of said City on or before the 12<sup>th</sup> day of January, 2008, for any and all damages sustained by the vacation aforesaid.

SECTION 7. That any ordinance or section of any ordinance passed and approved prior to or subsequent to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby appealed.

SECTION 8. This ordinance shall be published in pamphlet form and shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

PASSED AND APPROVED this 12th day of December, 2007.

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Mayor Dana Trowbridge

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City Clerk Joan E. Kovar

A franchise agreement between the City and Timberline Energy, L.L.C. was discussed.. The purpose of the project is to collect methane from the Butler County Landfill before it is emitted into the air. Timberline Energy will build a collection system in the landfill and pipe the gas to Henningsen Foods for use in their boilers. The proposed pipeline is from the B.C. landfill west on county road 35 continuing west on the north side of "A" Street turning north in the alley that comes up to the west side of Henningsen Foods, 325 N 3<sup>rd</sup> Street. Mayor Trowbridge asked for any new information concerning this agreement since the public meeting held on December 4, 2007. Council member Scribner stated that this provides no use or benefit for the general public as this is for Henningsen Foods. At the December 4, 2007 meeting property owners were concerned that their landscaping, trees, sprinklers, and driveways may be disturbed. Property owner/Attorney Robert Bierbower stated that he didn't think that the City actually had the authority to use the City's right-of-way for a private entity and felt that there are alternatives that have not been explored. Bierbower stated: "Remember who you represent - the citizens of David City - not these companies." "I would ask you to not approve this."

Council member Scribner made a motion to table consideration of approving a franchise agreement between the City and Timberline Energy, L.L.C. until the County of Butler decides what to do concerning this pipeline. The motion died for lack of a second.

City Administrator Johnson stated that protection is built into the agreement which says "the Grantee shall restore the Public Right of Way to the condition it was in before it was disturbed, and shall ensure that the Right of Way is maintained for five years." Attorney Robert Bierbower questioned: "But what if they don't." City Administrator Johnson stated: "I give you my personal guarantee; I promise that I will send the city crews out to correct any problems that aren't resolved and then bill Timberline Energy". Council member Schatz stated that this will improve and be a benefit to the environment and to the community as a whole (by capturing methane that would escape from the Butler County landfill into the environment); Henningsen Foods is doing this totally on an environmental aspect; not to save money.

Council member Schatz made a motion to approve a franchise agreement between the City of David City, Nebraska, and Timberline Energy, L.L.C. for the construction of a natural gas line in the public right-of-way. Council member Hein seconded the motion. Voting AYE: Council members Lukassen, Hein, and Schatz. Voting NAY: Council member Scribner. Council member Smith abstained. City Attorney Egr had stated prior to the meeting that a majority vote is currently three (3) since there are currently only five (5) members on the council due to the vacancy. The motion carried.

Ordinance No. 1059 to amend the Future Land Use Map was passed on 2<sup>nd</sup> reading on 11/14/07. Council member Schatz made a motion to pass and adopt Ordinance No. 1059 on the third and final reading. Council member Hein seconded the motion. Voting AYE: Council members Smith, Scribner, Lukassen, Hein, and Schatz. Voting NAY: None. The motion carried and Ordinance No. 1059 was passed on 3<sup>rd</sup> and final reading as follows:

#### **ORDINANCE NO. 1059**

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN OF THE CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA; TO PROVIDE FOR THE EFFECTIVE DATE HEREOF; AND TO PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. Approval of Amendment and Update to Future Land Use Map. The City Council held a Public Hearing on September 12, 2007 and reviewed the Future Land Use Map. On October 10, 2007, the David City Planning Commission conducted a hearing on the matter of amending the future land use map and reported to the City Council that it recommended approval of the land use changes.

On October 10, 2007, the City Council found and determined that the Future Land Use Map is advisable and in the best interests of the City. The City Council further found and determined that public hearings were duly held and notices were duly given. The City Council hereby approves said proposed changes and updates to the Future Land Use Map as set forth in Section 2 of this Ordinance.

The amended version of the Future Land Use Map of the City of David City is hereby adopted and shall be signed by the Mayor, attested to by the City Clerk and shall bear the seal of the City and shall show the date of the adoption of this Ordinance.

Section 3. Effective Date. This Ordinance shall be in full force and effect from and after passage, approval and publication as provided by law.

PASSED AND APPROVED this 12<sup>th</sup> day of December, 2007.

CITY OF DAVID CITY

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Mayor Dana Trowbridge

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City Clerk Joan E. Kovar

Ordinance No. 1060 to adopt a new updated Zoning Ordinance and Official Zoning Map was passed on 2<sup>nd</sup> reading 11/14/07.

Council member Schatz made a motion to amend the actual zoning ordinance referenced in Ordinance No. 1060 by deleting 16. a. under 5.11.03 Conditional Uses on Page 66 which states: Storage unit is an extension of an existing self-storage unit or facility. Council member Hein seconded the motion. Voting AYE: Council members Scribner, Lukassen, Smith, Hein, and Schatz. Voting NAY: None. The motion carried deleting 16. a. under 5.11.03 Conditional Uses on Page 66 which states: Storage unit is an extension of an existing self-storage unit or facility.

Council member Schatz made a motion to pass and adopt Ordinance No. 1060, with the amendment stated above, on the third and final reading. Council member Lukassen seconded the motion. Voting AYE: Council members Smith, Scribner, Hein, Lukassen, and Schatz. Voting NAY: None. The motion carried and Ordinance No. 1060 was passed on 3<sup>rd</sup> and final reading as follows:

**ORDINANCE NO. 1060**

AN ORDINANCE TO ADOPT A NEW UPDATED ZONING ORDINANCE AND OFFICIAL ZONING MAP OF THE CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF IN PAMPHLET FORM.

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

Section 1. Approval of Zoning Ordinance and Official Zoning Map.

The City Council held a public hearing on said proposed updates and adoption of a new Zoning Ordinance and Official Zoning Map on September 12, 2007, and found and determined that said proposed changes in documents are advisable and in the best interests of the City. Since there were additional proposed updates, the updates were given to the Planning Commission for review.

On October 10, 2007, the David City Planning Commission met at 6:00 p.m. and conducted a public hearing on the matter of updating and adopting a new Zoning Ordinance and Official Zoning Map to reflect changes caused by corrected property lines, land uses, and recent annexations as provided for in Section 405 of the David City Zoning Ordinance and reported to the City Council that it recommended approval of the new Zoning Ordinance and Official Zoning Map.

On October 10, 2007, the City Council found and determined that said proposed changes in documents dated October 2007 are advisable and in the best interest of the City. The City Council further found and determined that public hearings were duly held and notices were duly given. The City Council hereby approves said new updated Zoning Ordinance and Official Zoning Map.

Section 2. Adoption of a new Official Zoning Map. Pursuant to Section 405 of the David City Zoning Ordinance, the Official Zoning Map of the City of David City is hereby amended and updated to reflect changes caused by corrected property lines, land uses, recent annexations, and the new Zoning Ordinance.

The amended version of the Official Zoning Map of the City of David City is hereby adopted and shall be signed by the Mayor, attested to by the City Clerk and shall bear the seal of the City under the following words:

"This is to certify that this is the Official Zoning Map referred to in Section 2 of Ordinance No. 1060 of the City of David City, Nebraska"

and shall show the date of the adoption of this Ordinance.



Section 3. Effective Date. This Ordinance shall be in full force and effect from and after passage, approval and publication or posting as required by law.

PASSED AND APPROVED this 12<sup>th</sup> day of December, 2007.

CITY OF DAVID CITY

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Mayor Dana Trowbridge

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City Clerk Joan E. Kovar

Ordinance No. 1063 was introduced and passed on 1<sup>st</sup> reading on November 14, 2007. Council member Schatz introduced Ordinance No. 1063 and moved to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council member Schatz made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Hein seconded the motion. Voting AYE: Council members Scribner, Lukassen, Smith, Hein, and Schatz. Voting NAY: None. The motion carried.

Council member Schatz made a motion to pass and adopt Ordinance No. 1063 on the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Scribner, Hein, Smith, and Schatz. Voting NAY: None. The motion carried and Ordinance No. 1063 was passed and adopted as follows:

**ORDINANCE NO. 1063**

AN ORDINANCE AMENDING CHAPTER 8, SECTION 3 OF THE OF THE CITY OF DAVID CITY, NEBRASKA, 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. Section 3, of Chapter 8 of the David City Municipal Code Book be amended to read as follows:

**Article 3.**

**§8-301 STREETS; NAMES AND NUMBERS.** The Governing Body may at any time, by

ordinance, rename any street or provide a name for any new street. Buildings used for residence or business purposes and located along such streets shall retain such numbers as the Governing Body may require. It shall be the duty of the Municipal official in charge of streets, upon the erection of any new building or buildings to assign the proper numbers to said building or buildings and give notice to the owner or owners and occupant or occupants of the same.

- §8-302** **STREETS; CROSSINGS.** The Governing Body may order and cause to be constructed, under the supervision of the Municipal official in charge of streets, such street, avenue, and alley crossings as the Governing Body shall deem necessary. When a petition for the construction of any such crossings is filed by an interested resident in the office of the Municipal Clerk, said Municipal Clerk shall refer such application to the chief street official who shall investigate and make his recommendation to the Governing Body. Action by the Governing Body on such application, whether the application is approved or rejected, shall be considered final.
- §8-303** **STREETS; WIDENING OR OPENING.** The Governing Body shall have the power to open or widen any street, alley, or lane within the limits of the Municipality; to create, open, and improve any new street, alley, or lane; Provided, all damages sustained shall be ascertained in such manner as shall be provided by ordinance. *(Ref. 17-558, 17-559, 76-704 thru 76-724 RS Neb.)*
- §8-304** **STREETS; EXCAVATION.** It shall be unlawful for any person to make an excavation in any street or streets for any purpose whatsoever unless a written permit is issued by the chief Municipal street official authorizing such excavations.
- §8-305** **STREETS; DRIVING STAKES.** It shall be unlawful for any person to drive any peg or stake of any kind into the pavement in any street or alley without first procuring the written consent of the Municipal Street official.
- §8-306** **STREETS; MIXING CONCRETE.** It shall be unlawful for any person to mix any concrete or plastering material directly on the street pavement for any reason whatsoever.
- §8-307** **STREETS; HARMFUL LIQUIDS.** It shall be unlawful for any person to place or permit to leak in the gutter of any street, waste gasoline, kerosene, or high lubricating oils, which damage or act as a solvent upon said streets.
- §8-308** **STREETS; EAVE AND GUTTER SPOUTS.** It is hereby declared unlawful for any person to erect or maintain any dwelling house or business building within the limits of the Municipality where the said dwelling or building abuts on any sidewalk or street without providing proper guttering and eave spouts to receive the waste waters that collect on the said sidewalks and streets. All eave spouts erected on any dwelling house or business building shall be constructed to drain into the alleys, or shall be buried beneath the sidewalks and drain into the streets where it is found to be impossible to drain said eave spouts into the alley.
- §8-309** **STREETS; HEAVY EQUIPMENT.** It shall hereafter be unlawful for any person or persons to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing on any unpaved street without first having

protected such curb, gutter, bridge, culvert, sidewalks, crosswalk, or crossing with heavy plank sufficient in strength to warrant against the breaking or damaging of such curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing. Hereafter, it shall be unlawful to run, drive, move, operate, or convey over or across any paved street a vehicle, machine, or implement with sharp discs or sharp wheels that bear upon said pavement; with wheels having cutting edges; with wheels having lugs, any protruding parts, or bolts thereon that extend beyond a plain tire so as to cut, mark, mar, indent, or otherwise injure or damage any pavement, gutter, or curb; Provided, where heavy vehicles, structures, and machines move along paved or unpaved street the Municipal Police are hereby authorized and empowered to choose the route over which the moving of such vehicles, structures, or machines will be permitted and allowed. Nothing in this Section shall be construed to apply to pneumatic tires with metal or metal-type studs not exceeding five-sixteenths of an inch in diameter inclusive of the stud-casting with an average protrusion beyond the tread surface of not more than seven sixty-fourths of an inch between October 1, and April 15; Provided, that school buses and emergency vehicles shall be permitted to use metal or metal-type studs all year; it shall be permissible to use farm machinery with tires having protuberances which will not injure the streets; and it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other condition tending to cause a vehicle to slide or skid. (Ref. 60-6,250 RS Neb.)

**§8-309.01 STREETS; HEAVY LOADS, SPECIAL ROUTES.** It shall be unlawful for any person, partnership, firm or corporation to drive with heavier loads on the streets, pavement or public roads within the City of David City, Nebraska, than authorized by resolution of the City of David City, Nebraska. Said streets and routes shall be posted by the Street Superintendent pursuant to resolution of the Council and this shall constitute notice to the Public. (Ord. No. 538, 5/10/79)

**§8-310 STREETS; PIPE LINES AND WIRES.** Poles, wires, gas mains, pipe lines, and other appurtenances of public service companies shall be located, or erected over, upon, or under the streets, alleys, and common grounds of the Municipality. Application for location of the above shall be made to the Governing Body in writing. Approval by that body shall be issued in writing. Any public service company granted a right-of-way for the erection and maintenance of poles, conduits, gas mains, pipe lines, and wires shall at all times erect and locate their poles, wires, gas mains, pipe lines, and other appurtenances at such places and in such manner as shall be designated by the Governing Body. Such poles, wires, gas mains, pipe lines, and other appurtenances, shall be removed or relocated by said companies at their own expense when requested to do so by the Governing Body. Any such relocation shall be ordered by resolution of the Governing Body and the Municipal Clerk shall notify any and all companies affected. Said companies shall, within twenty-four (24) hours after receiving notice, at their own expense, cause the poles, wires, gas mains, pipe lines, or other appurtenances to be removed. The Governing Body shall designate another location as closely as possible where said poles, wires, gas mains, pipe lines, or other appurtenances, may be reset or placed. All poles, wires, gas mains, pipe lines, or other appurtenances, shall be reset, placed, or erected in such a manner that they will not interfere with the water system; sewerage system; poles, wires, and mains of any public utility; adjacent buildings; or with travel on the public ways and property. Whenever possible, all pole lines, wires, gas

mains, pipe lines, or appurtenances shall be confined to the alleys of the Municipality. (Ref. 17-567 RS Neb.)

**§8-311 STREETS; CONSTRUCTION ASSESSMENT.** To defray the costs and expenses of street improvements, as may be authorized by law, the Governing Body shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to, abutting upon, or especially benefiting from, the street, avenue, alley, or sidewalk in whole or in part opened, widened, curbed, curbed and guttered, graded, paved, repaired, graveled, macadamized, parked, extended, constructed, or otherwise improved or repaired. The Governing Body sitting as the Board of Equalization shall review all such improvements in accordance with the procedure provided by law. All special assessments shall be made by the Governing Body at a regular or special meeting by resolution, taking into account the benefits derived or injuries sustained in consequence of such improvements and the amount charged against same. The vote shall be recorded in the minutes. Notice of the time of holding such meeting and the purpose for which it is to be held shall be published in some legal newspaper published, or of general circulation, in the Municipality at least four (4) weeks before the same shall be held. In lieu of such aforementioned notice, personal service may be had upon the persons owning or occupying the property to be assessed. Such assessments shall be known as "special assessments for improvements; and with the cost of notice shall be levied and collected as a special tax in addition to the taxes for general revenue purposes, subject to the same penalties and collected in like manner as other Municipal taxes and shall be certified to the County Clerk by the Municipal Clerk forthwith after the date of levy, for collection by the Treasurer of said County unless otherwise specified. After is shall become delinquent said assessment shall draw interest at the legal interest rate per annum. In the event the property owner is a nonresident 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. 17-511, 17-524 RS Neb.)

**§8-312 STREETS; AUCTIONS, PARADES, RACES, RALLIES, BLOCK PARTIES AND SUCH OTHER RELATED ACTIVITIES; PERMIT REQUIRED FOR CLOSING.** No person shall close any street or alley in the City for purposes of auction sales, parades, races, rallies, block parties and such other related activities without first obtaining a permit from the City.  
A person seeking issuance of a permit shall file an application for such permit with the City, said application to be in writing upon forms provided by the City:

- (1) Every application shall be accompanied by a cash deposit of ten dollars (\$10.00).
- (2) Upon receipt of the application and deposit, said application shall be referred to the City Administrator.
- (3) If the application is not approved, the deposit shall be returned to the applicant. If the application is approved, the applicant shall be required to comply with all rules, regulations and conditions contained in said permit and with all other

applicable laws and ordinances. (*Ref. 17-567 RS Neb.*) (*Ord. No. 603, 11/9/83*)  
(*Amended by Ord. Nos. 639, 5/22/85; 670, 10/22/86*)

**§8-313** **STREETS; DRIVEWAY APPROACHES.** The Street Superintendent may require the owner of property served by a driveway approach constructed or maintained upon the street right-of-way to repair or replace any such driveway approach which is cracked, broken, or otherwise deteriorated to the extent that it is causing or is likely to cause damage to or interfere with any street structure including pavement or sidewalks. The minimum thickness of the driveway approach shall be five (5"). The Municipal Clerk shall give the property owner notice by registered letter or certified mail, directed to the last known address of such owner or the agent of such owner, directing the repair or replacement of such driveway approach. If within thirty (30) days of mailing such notice the property owner fails or neglects to cause such repairs or replacements to be made, the Street Superintendent may cause such work to be done and assess the cost upon the property served by such approach. (*Ref. 18-1748 RS Neb.*) (*Ord. No. 622, 12/12/84*)

**§8-314** **STREETS; VACATING PUBLIC WAYS; DEFINITIONS AND ASCERTAINING DAMAGES.**

- A. Special damages shall mean only those losses or damages or injuries which a property owner suffers that are peculiar or special or unique to his/her property, and which result from the Governing Body vacating such street, avenue, alley, lane or similar public ways.  
Special damages shall not mean those losses or damages or injuries that a property owner suffers that are in common with the rest of the City or public at large, even though those losses or damages or injuries suffered by the property owner are greater in degree than the rest of the City or public at large.
- B. The Mayor shall appoint three (3) or five (5) or seven (7) disinterested residents of the Municipality to a Special Commission to ascertain the amount of special damages that the abutting property owners are entitled to receive and which resulted from the Governing Body vacating such street, avenue, alley, lane or similar public way. The appointees of the Special Commission shall be approved by the City Council. Only special damages, as herein defined, shall be awarded to the abutting property owners.
- C. In determining the amount of compensation to award the abutting property owners as special damages, the aforementioned Commission shall use the following rule:

The abutting property owner is entitled to recover as compensation the difference between the value of such property immediately before and immediately after the vacating of such street, avenue, alley, lane or similar public way. However, if no difference in value exists the abutting property owner is entitled to no compensation. (*Ref. 17-558, 17-559 RS Neb.*) (*Ord. No. 663, 8/27/86*)

**§8-315** **STREETS; VACATING PUBLIC WAYS; PROCEDURE.**

Whenever the Governing Body decides that it would be in the best interests of the Municipality to vacate a street, avenue, alley, lane or similar public way, the Governing Body shall comply with the following procedure:

- A. Notice. Notice shall be given to all abutting property owners either by First (1<sup>st</sup>) Class mail to their last known address or if there is no known address then by publishing the notice in a newspaper that is of general circulation in the Municipality. The content of the notice will advise the abutting property owners that the Governing Body will consider vacating such street, avenue, alley, lane or similar public way at their next regular meeting or if a special meeting is scheduled for such discussion, then the date, time and place of such meeting.
- B. Consent / Waiver. The Governing Body may have all the abutting property owners sign a form stating that they consent to the action being taken by the Governing Body and waive their right of access. The signing of such form has no effect on claims for special damages, as defined in Section 8-314 by the abutting property owners, but does create the presumption that the Governing Body's action was proper.  
However, if all the abutting property owners do not sign the consent/waiver form, the Governing Body may still proceed with vacating such street, avenue, alley, lane or similar public way under the authority granted them by Sections 17-558 and 17-559 RRS Neb.
- C. Ordinance. The Governing Body shall pass an ordinance that shall state essentially the following:
1. A declaration that the action is expedient for the public good or in the best interests of the Municipality.
  2. A statement that the Municipality shall have an easement for maintaining all utilities.
  3. A method or procedure for ascertaining special damages to abutting property owners.
- D. Filing. The Clerk shall file a copy of the ordinance with the County Register of Deeds to ensure that abutting property owners can gain title to their share of the vacated street, avenue, alley, lane or similar public way and so that such land will be drawn to the attention of the County Assessor. (*Ref. 17-558, 17-559 RS Neb.*) (*Ord. No. 664, 8/27/86*)

**§8-316 STREETS; CONSTRUCTION ASSESSMENT; ALL NEW SUBDIVISIONS & HOUSING DEVELOPMENTS LOCATED WITHIN THE CITY'S CORPORATE LIMITS AND WITHIN THE CITY'S ZONING JURISDICTION.**

- (A) To defray the costs and expenses of street improvements, as may be authorized by law, the Governing Body shall have the power and authority to require that all developers petitioning the municipality for street construction shall pay the following expenses:

Street Construction: The developer(s) is responsible for eighty percent (80%) of all costs associated with the development of new streets within, leading to, or connecting the subdivision(s).

Curb and Gutter: The developer(s) is responsible for eighty percent (80%) of all costs associated with the installation of new curb; curb and gutter.

Intersections: The developer(s) is responsible for eighty percent (80%) of all costs associated with installation of intersections within the subdivision or housing development.

Engineering Fees: The developer(s) is responsible for eighty percent (80%) of all costs associated with the services provided by the selected engineer.

- (B) Before final plat approval is granted by the Governing Body the developer(s) shall have completed and paid their full share of the project costs.
- (C) The arrangement, character, extent, width, grade, and location of all streets within all subdivisions and housing developments shall conform to the standards of the Comprehensive Plan of current adoption and Zoning Ordinances of the City. All required improvements and installations shall be constructed or installed to conform to the provisions of this Ordinance and the standard specifications of the City.
- (D) All developers wishing to locate new subdivisions, or who have existing subdivisions and housing developments, located within the city limits and within the city's zoning jurisdiction are required to obtain and use an engineer that is selected by the municipality through a competitive bidding process.

**§8-317 STREETS: CLEANLINESS AND SANITATION OF PUBLIC STREETS.**

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, grass clippings, or waste. It is hereby the duty of the Municipal Police Department to investigate and document such violations of this code, and make a report of such violations to the City Office. Upon receipt of such violation notice, the City Clerk's Office shall send a billing to the responsible party in the amount of \$25.00.

For the purposes of this section, person includes the owner of the property from which the grass cuttings originate, the person legally entitled to occupy the premises, and, or, any person who caused the grass cuttings to be placed onto the street.

Section 2. That any ordinance or section of any ordinance passed and approved prior to or subsequent to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby appealed.

Section 3. This ordinance shall be published in pamphlet form and shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

PASSED AND APPROVED this 14<sup>th</sup> day of November, 2007.

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Mayor Dana Trowbridge

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City Clerk Joan E. Kovar

Ordinance No. 1064 was introduced and passed on first reading on November 14, 2007. Council member Schatz made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Lukassen, Hein, Smith, and Schatz. Voting NAY: None. The motion carried.

Council member Schatz made a motion to pass and adopt Ordinance No. 1064 on the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Hein, Scribner, Lukassen, Smith, and Schatz. Voting NAY: None. The motion carried and Ordinance No. 1064 was passed on 3<sup>rd</sup> and final reading as follows:

**ORDINANCE NO. 1064**

AN ORDINANCE AMENDING CHAPTER 8, SECTION 1 OF THE CITY OF DAVID CITY, NEBRASKA, MUNICIPAL CODE BOOK, PROVIDING AN EFFECTIVE DATE AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

BE IN ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA.

Section 1. Section 1 of Chapter 8 of the David City Municipal Code Book be amended to read as follows:

**Chapter 8**

**PUBLIC WAYS AND PROPERTY**

**Article 1. Municipal Property**

**§8-101** **DEFINITIONS.** The following definitions shall be applied throughout this Chapter. When no definition is specified, the normal dictionary usage of the word shall apply.

**SIDEWALK SPACE.** The term "sidewalk space," as used herein, shall mean that portion of a street between curb lines and adjacent property lines.



RIGHT-OF-WAY. Right-of-way (R.O.W.) shall mean an area or strip of land, either public or private, on which an irrevocable right of passage has been dedicated, recorded, or otherwise legally established for the use of vehicles or pedestrians or both, and in which all pavement and most utilities are located. The R.O.W. is comprised of street, parking, and sidewalk.

**§8-102** **MUNICIPAL PROPERTY; MAINTENANCE AND CONTROL.** The Governing Body shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within the Municipality, and shall cause the same to be kept open and in repair, and free from nuisances. (*Ref. 17-567 RS Neb.*)

**§8-103** **MUNICIPAL PROPERTY; SALE AND CONVEYANCE.**

(1) Except as provided in subsection (4) of this section, the power of the Municipality to convey any real and personal property owned by it, including land used for park purposes and public squares, except real property used in the operation of public utilities, shall be exercise by resolution, directing the sale at public auction or by sealed bid or such real and personal property and the manner and terms thereof, except that such real and personal property shall not be sold at public auction or by sealed bid when:

- (a) Such property is being sold in compliance with the requirements of federal or state grants or programs;
- (b) Such property is being conveyed to another public agency, or;
- (c) Such property consists of streets and alleys.

The Governing Body may establish a minimum price for such real and personal property at which bidding shall begin or shall serve as a minimum for a sealed bid.

(2) After the passage of the resolution directing the sale, notice of all proposed sales of real and personal property described in subsection (1) of this section and the terms thereof, shall be published once each week for three (3) consecutive weeks in a legal newspaper published in or of general circulation in the Municipality; provided, if a remonstrance against such sale, signed by registered voters thereof equal in number to thirty percent (30%) of the registered voters of the Municipality voting at the last regular Municipal election held therein, be filed with the Governing Body within thirty (30) days after the third (3<sup>rd</sup>) publication of the notice, such property shall not then, nor within one (1) year thereafter be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty (30) day period, but the filing shall be considered timely if filed or postmarked on or before the next business day. Real estate now owned or hereafter owned by the Municipality may be conveyed without consideration to the State of Nebraska for state armory sites or, if acquired for state armory sites, such property shall be conveyed strictly in accordance with the conditions of sections 18-1001 to 18-1006 RS Neb.

(3) Following (a) passage of the resolution directing a sale, (b) publishing of the notice of the proposed sale, and (c) passing of the thirty-day right of remonstrance period, the property shall then be sold. Such sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale. The Municipal

Clerk shall upon passage of such ordinance certify the name of the purchaser to the Register of Deeds of the county in which the property is located.

(4) This section shall not apply to the sale of real and personal property if the authorizing resolution directs the sale of an item or items of real and personal property the total fair market value of which is less than five thousand dollars (\$5,000.00). Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the Municipality for a period of not less than seven (7) days prior to the sale of the property. Confirmation of the sale by passage of an ordinance may be required. (Ref. 17-503, 17-503.01 RS Neb.)

**§8-104** **MUNICIPAL PROPERTY; OBSTRUCTIONS.** Trees and shrubs, growing upon, or near, the lot line, or upon public ground and interfering with the use, or construction of any public improvements shall be deemed an obstruction under this article. In case such abutting property owner refuses or neglects, after five days' notice by publication or, in place thereof, personal service of such notice, to remove all encroachments from sidewalks, the city may cause such encroachments to be removed, and the cost of removal paid out of the street fund. The Council shall assess the cost of the notice and removal of the encroachment against such abutting property. Such special assessment shall be known as a special sidewalk assessment and, together with the cost of notice, shall be levied and collected as special taxes in addition to the general revenue taxes, and shall be subject to the same penalties and shall draw interest from the date of the assessment. Upon payment of the assessment, the same shall be credited to the street fund. It shall be unlawful for any person, persons, firm, or corporation to obstruct, or encumber, by fences, gates, building structures, debris, plowed snow or otherwise, any of the streets, municipal property, alleys or sidewalks. (Ref. 17-557.01 RS Neb.)

**§8-105** **MUNICIPAL PROPERTY; PERMITTED OBSTRUCTIONS.** Persons engaged in the erection, construction, reconstruction, wrecking or repairing of any building, or the construction, or repair, of a sidewalk along any street, may occupy the public street space with such building material and equipment as long as is necessary if such persons shall make application to and receive a permit in writing from the Municipal official in charge of Municipal streets to do so; provided, no permit for the occupancy of the sidewalk space, and more than one-third (1/3) of the roadway of the public space adjacent to the real estate on which said building is to be constructed, erected, reconstructed, wrecked, or repaired shall be granted; and provided further, a suitable passageway for pedestrians shall be maintained within the public space included in the permit which shall be protected and lighted in the manner required by the official issuing the permit.

Definitions:

- a. **Break-away Mailboxes:** Mailboxes which are designed to bend or fall away when struck by a vehicle, such as mailboxes which are constructed with a 4 by 4 wooden gate post, 2 inch tubular street gate post, one piece plastic mailbox placed upon a 3 ½ inch steel sleeve, and similar designs which are not constructed of brick and/or blocks.

- b. Multi-compartment Mailboxes: Mailboxes which typically contain multiple mailboxes for two or more separate residences upon a single post or pedestal.
- c. Non-breakaway Mailboxes: Mailboxes which are not designed to bend or fall away when struck by a vehicle. Examples of non-breakaway mailboxes include brick or block mailbox structures and pillar mailbox structures.
- d. Pillar: Decorative structures placed at the back of the curb or abutting the street that are not designed to bend or fall away when struck by a vehicle. Examples of pillars include brick or block decorative structures.

Residents are not allowed to build or maintain any building or structure which will be placed upon any street right-of-way, except breakaway mailboxes. Breakaway mailboxes may be installed in the City's street right-of-way without a building permit from the City. No person shall construct, use, or maintain any multi-compartment mailbox, non-breakaway mailbox, pillar, or a combination thereof in the City, unless and until permission is granted to construct multi-compartment mailboxes, non-breakaway mailbox, pillar, or a combination thereof by the issuance of a building permit by the City Zoning Administrator. Multi-compartment mailboxes, non-breakaway mailbox, pillar, or a combination thereof shall not exceed the total square footage of four square feet (4') per structure and five feet (5') in height. Multi-compartment mailboxes, non-breakaway mailbox, pillar, or a combination thereof shall not exceed two (2) structures per residential property and shall be positioned at the end of the driveway or property entrance abutting a City street or one (1) structure per residential property without a driveway or property entrance abutting a City Street. Multi-compartment mailboxes, non-breakaway mailbox, pillar, or a combination thereof shall meet site-triangle guidelines of the City and other City Zoning Regulations as may be applicable.

Any property owner, who places or constructs any structure or item of any kind in the City's street right-of-way, be it general, implied, or specific, including mailboxes and pillars, shall hold the City harmless from any liability relating to the construction and maintenance of the structure in the City's street right-of-way or because of any defect therein of said structure.

Any structure located in the City's street right-of-way, be it general, implied, or specific, and shall apply, also, to snow removal, pavement repairs, or street cleaning is subject to damage or destruction, at any time, as the result of the City or a person with a utility easement entering upon the City's street right-of-way to construct, repair or maintain facilities located in the City's street space.

Structures in the City's street right-of-way, be it general, implied, or specific, have no absolute right to be there.

Section 2. That any ordinance or section of any ordinance passed and approved prior to or subsequent to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby appealed.

Section 3. This ordinance shall be published in pamphlet form and shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

PASSED AND APPROVED this 14<sup>th</sup> day of November, 2007.

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Mayor Dana Trowbridge

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City Clerk Joan E. Kovar

Council member Schatz made a motion to authorize Mayor Trowbridge to execute an agreement with Olsson Associates regarding a transition plan for service area expansion. Council member Smith seconded the motion. Olsson Associates will tour the service expansion area and identify the electric customers that will need to be transferred from the REA to the City and will form the basis for developing options for extending City electric service to these new customers. Olsson Associates will review the City's electric distribution system and the map of the system to identify options for serving the new customers. Olsson will develop opinions of probable construction costs for the service options identified, provide information on any prioritization for service to the new customers that become evident in preparation of this plan, and prepare a letter report documenting the transition plan and present the report to the City Council. Voting AYE: Council members Scribner, Hein, Lukassen, Smith, and Schatz. Voting NAY: None. The motion carried.

Council member Schatz made a motion to advance to agenda item #21 - Consideration of authorizing Mayor Trowbridge to execute a letter of waiver concerning Henningsen Foods Inc. Series 1998 Bonds. Council member Hein seconded the motion. Voting AYE: Council members Lukassen, Smith, Scribner, Hein, and Schatz. Voting NAY: None. The motion carried.

Mayor Trowbridge stated that he was comfortable executing a letter of waiver for Henningsen Foods as there is no impact on the bonds, no liability to the City of David City, and it doesn't affect the bond holders. It is difficult to maintain that kind of capital.

Council member Schatz made a motion to authorize Mayor Trowbridge to execute a letter of waiver concerning Henningsen Foods Inc. Series 1998 Bonds. Council member Lukassen seconded the motion. Voting AYE: Council members Hein, Smith, Scribner, Lukassen, and Schatz. Voting NAY: None. The motion carried.

December 13, 2006

Mr. Gary F. Van Schaften  
Vice President/Chief Financial Officer  
Henningsen Foods, Inc.  
Suite 311  
2700 Westchester Avenue  
Purchase, New York 10577-2554

A. In re: Henningsen Foods, Inc.: Series 1998A Bonds

Dear Mr. Van Schaften:

The City of David City, Nebraska, is in receipt of your letter dated November 28, 2007, in which you request a waiver by the City, as Lessor under the Lease Agreement dated as of August 15, 1979, as supplemented by the Fourth Supplement to Lease Agreement dated as of December 1, 1998, of the requirements of Section 5.2 of the 1979 Lease Agreement, which were incorporated by reference into the Fourth Supplement to Lease Agreement. We also received a copy of your letter dated November 28, 2007 to US Bank, N.A., as Trustee under the Series 1998 Bonds regarding the similar request for waiver of the requirements of Section 5.2.

In your letter to the Trustee, you indicate that you are actively taking steps to bring Henningsen Foods into compliance with the provisions of Section 5.2. You are requesting that we waive compliance with that provision through October 31, 2007, based upon the authority contained in Section 7.7 of the Fourth Supplement to Lease Agreement. The requirements would be reinstated on November 1, 2008.

Based upon the authority of Section 7.7 of the Fourth Supplement to Lease Agreement and your representations that you have taken steps to bring Henningsen Foods into compliance with Section 5.2 and are diligently pursuing such efforts, the City of David City, Nebraska, waives compliance with the provisions of Section 5.2 of the 1979 Lease Agreement through October 31, 2008. The requirements will be reinstated on November 1, 2008.

We are providing the Trustee with a copy of this letter. We understand that you will provide a copy of this letter to the issuer of the Letter of Credit in the 1998 issue of bonds, the Bank of Tokyo-Mitsubishi, Ltd., and are authorized to do so.

Yours very truly,  
THE CITY OF DAVID CITY, NEBRASKA  
By: Dana Trowbridge, Mayor

cc: US Bank, N.A., Trustee

Council member Schatz made a motion to advance to agenda item #20 - Consideration of designating 1<sup>st</sup> National Bank of Omaha - David City Branch; U.S. Bank - David City Branch; Union Bank - David City Branch; and Bank of the Valley - David City Branch; as depository banks for the City of David City / David City Utilities. Council member Lukassen seconded the motion. Voting AYE: Council members Hein, Smith, Scribner, Lukassen, and Schatz. Voting NAY: None. The motion carried.

Council member Schatz made a motion to designate 1<sup>st</sup> National Bank of Omaha - David City Branch; U.S. Bank - David City Branch; Union Bank - David City Branch; and Bank of the Valley - David City Branch; as depository banks for the City of David City / David City Utilities for the upcoming year. Council member Hein seconded the motion. Voting AYE: Council members Smith, Scribner, Lukassen, Hein, and Schatz. Voting NAY: None. The motion carried.

Council member Schatz made a motion to close the City Office and all city/utility departments on Friday, January 25, 2008 for a half day customer service training for all employees. Council member Hein seconded the motion. City Administrator Johnson stated that Dr. Bill Podraza will conduct the customer service training. It was noted that all employees can get better at customer service. Voting AYE: Council members Scribner, Smith, Lukassen, Hein, and Schatz. Voting NAY: None. The motion carried.

Council member Scribner made a motion to advance to agenda item #26 - Consideration of the Mayor's recommendation for filling the vacancy for council member 1<sup>st</sup> Ward and Oath of Office for new council member. Council member Smith seconded the motion. Mayor Trowbridge stated that this agenda item was deliberately placed last on the agenda as he thinks it is blatantly unfair to have a new council member vote on issues that he does not have a lot of

background information on. Voting AYE: Council members Lukassen, Smith, and Scribner. Voting NAY: Council members Hein, and Schatz. The motion carried.

Mayor Trowbridge presented the name of William (Bill) C. Yindruck, 1183 N 5<sup>th</sup> Street, David City, Nebraska, for Council member 1<sup>st</sup> Ward to fill the vacancy of Council member Rick Holland whose term runs till December 2010. Council member Schatz made a motion to accept the recommendation of Mayor Trowbridge to appoint William C. Yindruck as Council member 1<sup>st</sup> Ward, whose term will run until December 2010. Council member Hein seconded the motion. Voting AYE: Council members Lukassen, Smith, Scribner, Hein, and Schatz. Voting NAY: None. The motion carried.

City Attorney Jim Egr presented the Oath of Office to William C. Yindruck - Council member 1<sup>st</sup> Ward - and he was seated.

Mayor Trowbridge called for election of City Council president. Ballot sheets were distributed. Mayor Trowbridge counted the ballots that resulted in a tie between Gary Smith and Bill Schatz. Mayor Trowbridge stated that situations have changed and Bill Schatz is in town more than he used to be; he voted for Gary Smith last time so this time he is voting for Bill Schatz. Mayor Trowbridge declared Bill Schatz as Council President.

Mayor Trowbridge asked for two council members to serve on the Finance Committee. Council members Ted Lukassen and Gary Smith agreed to serve on the Finance Committee and Mayor Trowbridge confirmed their appointment.

Mayor Trowbridge announced the list of Appointed Officials for the upcoming year. Mayor Trowbridge stated that at this time he would recommend the following appointments but reminded everyone that these are not carved in stone.

**APPOINTED OFFICIALS**  
As of December 13, 2007

CODE SECTION	OFFICIAL TITLE	APPOINTEE
202	City Administrator	Joseph J. Johnson
203 204	City Clerk + ) City Treasurer)	Joan E. Kovar *
203.01	Deputy Clerk	Tami L. Comte
205	City Attorney	James M. Egr
	Special Prosecutor	Julie Reiter
206	City Physician	Victor J. Thoendel, M.D.
207	Chief of Police	Stephen M. Sunday *

208	Police Officers	James D. Sylvester, Sergeant Vincent A. Brehm Kevin L. Broman Chere' N. Fisher Marla Jo Schnell Valerie Leona Jackson
209	Fire Chief	Matt Hilger
210	Street Superintendent	James K. McDonald *
	Electric Supervisor	Tim L. Kovar *
	Power Plant Supervisor	John J. Kabourek *
	Water/Sewer Supervisor	Jim D. Kruse *
211	Zoning Administrator	Roger Kotil
212	Park & Auditorium Supervisor	Bill Buntgen *

\* Denotes Department Head

Council member Hein made a motion to accept Mayor Trowbridge's recommendation concerning the appointment of department heads, police officers, and other officials. Council member Schatz seconded the motion. Voting AYE: Council members Smith, Scribner, Lukassen, Yindrick, Schatz, and Hein. Voting NAY: None. The motion carried.

City Administrator Johnson stated that President Busch issued an Executive order excusing executive branch non-Postal Service employees from duty on Monday, December 24, 2007, except those who cannot be excused for reasons of national security, defense, or other essential public need. Johnson stated that if the Council allowed this for the city employees it would give them a long weekend for the Holidays which is especially nice for those who need to travel.

Mayor Trowbridge stated that he was absolutely opposed to giving the employees Monday, December 24, 2007 as a paid holiday as the employees already received Martin Luther King as a holiday this year. City Administrator Johnson stated that this request is for this year only, not every year, as the agenda item clearly states Monday, December 24, 2007. Citizens Jim Redler and Allan Zavodny both stated that it would be a "good will gesture". Much discussion followed.

Council member Gary Smith made a motion to declare Monday, December 24, 2007, as a paid day off for all city employees for this year only. Council member Scribner seconded the motion. Voting AYE: Council members Lukassen, Schatz, Yindrick, Scribner, Smith, and Hein. Voting NAY: None. The motion carried.

There being no further business to come before the Council, Council member Yindrick made a motion to adjourn. Council member Hein seconded the motion. Voting AYE: Council

members Lukassen, Scribner, Smith, Hein, and Yindrick. Voting NAY: Schatz. The motion carried and Mayor Trowbridge declared the meeting adjourned at 8:57 p.m.

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Mayor Dana Trowbridge

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City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES  
December 12, 2007

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of December 12, 2007; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

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Joan E. Kovar, City Clerk