

CITY COUNCIL PROCEEDINGS

December 13, 2006

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

Present for the meeting were: Mayor Stephen Smith, Council members Gary Smith, Mark Kirby, Gary Kroesing, Bill Schatz, Nick Hein, and Ted Lukassen, City Administrator Joe Johnson, City Attorney Jim Egr, Electric Supervisor Tim Kovar, Water/Sewer Supervisor Jim Kruse, Electric Plant Supervisor John Kabourek, Police Chief Stephen Sunday, Street Superintendent Jim McDonald, Park/Auditorium Supervisor Bill Buntgen, Zoning Administrator Roger Kotil, Deputy City Clerk Tami Comte, Dan Greco & Chris Pawloski of Midwest Right of Way Services, Inc., D.C. Middle School Principal Tom Jahde, and students Chris Kouba and Seth Behrens, Skip Trowbridge, Bill Scribner, Rick Holland, Margaret Kitt, Max Birkel, Greg Sabata, Lonnie Davis, Bill Kozisek, Jim Vandenberg, Alfred Bongers, Scott Steager, unidentified citizens, Banner-Press Editor Larry Peirce, and City Clerk-Treasurer Joan Kovar.

The meeting opened with the Pledge of Allegiance.

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

The minutes of the November 8th, 2006 meeting of the Mayor and City Council were approved upon a motion by Council member Kroesing and seconded by Council member Kirby. Voting YEA: Council members Hein, Schatz, Lukassen, Smith, Kirby, and Kroesing. Voting NAY: None. The motion carried.

Mayor Smith asked for Petitions, Communications, and Citizens' Concerns in addition to those contained in the Agenda packets. There were none.

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

Street Superintendent Jim McDonald reported that he was appointed by Governor Heineman to serve on the Board of Examiners for County Highway and City Street Superintendents. The Board is responsible for testing and licensing local officials, or their agents, and charged with overseeing the construction, maintenance and operation of municipal streets and county roads.

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

Mayor Smith declared the Public Hearing open at 7:15 p.m. on the proposed David City Municipal Airport project and land acquisition necessary to meet current Federal Aviation Administration land requirements.

The following letter had been mailed – certified mail – to neighboring property owners:

As you are aware, the undersigned is the Attorney for the City of David City, Nebraska. We are planning a project to meet current Federal Aviation Administration (FAA) land requirements at the David City Municipal Airport. Certain real estate owned by you is proposed to be acquired as part of this project. By law, we cannot begin negotiations for acquisition of your real estate for at least 45 days after you receive this notice. At this time, I would like to take this opportunity to advise you of certain details regarding the proposed project.

1. Description of Property and Proposed Compensation: A description of the property interest proposed to be acquired from you and the compensation being offered to you by the City of David City, Nebraska is shown on Exhibit "1", attached to this letter.
2. Authority for Acquisition: The City of David City, Nebraska has the power to, among other things, acquire in the name of the City, by purchase or condemnation, real property or rights or easements necessary or convenient for its corporate purposes of the operation of an airport.
3. Nature and Necessity of Real Estate to be Used: The real estate proposed to be acquired is adjacent to the David City Municipal Airport. The proposed acquisition is necessary to meet current Federal Aviation Administration (FAA) land requirements.
4. Reasons for Selecting the Proposed Location and the Amount of Property Needed for the Public Purpose: The primary purpose of the proposed expansion project is to provide an aviation facility in compliance with the FAA designed guidelines to promote safety for all aircraft utilizing the facility now and in both the immediate (5 year) and long term (20 year) future. The primary project purpose is land acquisition needed to meet the minimum land required by FAA standards. This is necessary to provide the recommended runway safety area and object-free area, and to provide for airport sponsor control of the runway protection zones.
5. Federal Aviation Administration Approval: The FAA has been involved in the monitoring and approval of the project. The FAA and State of Nebraska provided substantial funds to purchase the necessary land rights. Since that time, the FAA and the State of Nebraska have reviewed and approved the Airport Layout Plan for the David City Municipal Airport and have also reviewed and approved the environmental assessment for the proposed airport improvements. The FAA has also reviewed and approved the real estate appraisal reports for each of the proposed parcels of real estate, which are part of the expansion project.

The City of David City, Nebraska, by and through the David City Municipal Airport will hold a public hearing on the proposed project and acquisition December 13, 2006 at 7:15 PM, at the David City, City Office, 557 Fourth Street. You are invited to attend. Thank you.

Sincerely,
James Egr
David City Attorney

Dan Greco and Chris Pawloski of Midwest Right of Way Services, Inc., presented an informational video concerning the David City Municipal Airport project and land acquisition necessary to meet current Federal Aviation Administration land requirements. The video explained the appraisal process, acquisition preparation, acquisition offer, negotiations, eminent domain process if necessary, and closing. A question and answer session followed the video.

There being no further discussion, Mayor Smith closed the Public Hearing at 7:41 p.m.

Mayor Smith declared a five minute recess at 7:42 p.m. The meeting resumed at 7:47 p.m.

Council member Kirby introduced Resolution No. 37-2006 and moved for its passage and adoption. Council member Smith seconded the motion. Voting YEA: Council members Kroesing, Hein, Schatz, Lukassen, Smith, and Kirby. Voting NAY: None. The motion carried and Resolution No. 37-2006 was passed and adopted as follows:

RESOLUTION NO. 37 - 2006

WHEREAS, the City of David City, Nebraska, provides electric, water, and sewer services in and around the City, and,

WHEREAS, a reasonable time is allowed for the customers to pay their bills for these services, and,

WHEREAS, there are occasions when customers do not pay their bills, and,

WHEREAS, it is an expense to the Utility Department to disconnect, and then re-connect services, and it is added wear and tear on the meters, and,

WHEREAS, the City Council has determined that fees be charged for the delivery of the disconnect notice, the termination of service, and the re-connection of the terminated service, which fees shall be set by resolution of the City Council and shall be collected prior to service being restored.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the following fees be effective beginning January 1, 2007:

	During regular business hours	After regular business hours
Delivery of disconnect notice	\$10.00	
Termination of service due to non-payment	\$30.00	
Reconnection of disconnected customers	\$30.00	\$60.00

PASSED AND APPROVED this 13th day of December, 2006.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Kirby introduced Resolution No. 38 - 2006 and moved for its passage and adoption. Council member Kroesing seconded the motion. Voting YEA: Council members Smith, Schatz, Hein, Lukassen, Kroesing, and Kirby. Voting NAY: None. The motion carried and Resolution No. 38 - 2006 was passed and adopted as follows:

RESOLUTION NO. 38 - 2006

WHEREAS, the City Administrator and City Council of the City of David City, Nebraska, have authority, by virtue of Municipal Code Section 3-810, to establish the amounts of service deposits to be charged to customers, and,

WHEREAS, it is necessary to adjust the fees for service deposits, and the requirements.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that a service deposit for electrical service shall be required of all subscribers, prior to the connection, for such services as a guarantee of payment. The amounts of such deposits and the administrative policies governing them shall be established by the City Administrator and approved by the City Council, and shall be on file at the City Office. The funds from deposits shall be invested by the City Treasurer and the income from the investment shall be used for the repair and maintenance of the electrical system.

All service deposit amounts shall be returned after the customer has established twenty-four consecutive months of utility bill payment without having been delinquent in payment.

CALCULATION OF SERVICE DEPOSIT:

Residential Customer:

Customer owned property	\$50.00
Customer renting property	\$150.00

In the event a customer previously lived in David City, they will still be required to make a deposit when they request service.

If the customer previously left town owing utility bills, then the customer will be required to pay all outstanding bills, plus 14% interest per year on the outstanding amount, and the required deposit will be as follows:

Customer owned property	\$100.00
Customer renting property	\$200.00

In the event of a divorce, separation, or split of tenants, the original deposit will apply to the property that the deposit was made for, regardless of which party actually made the deposit. If the party moving out relocates in David City, another service deposit will be required for this property.

Commercial Customer:

Transfer of ownership of existing business:

Customer shall make a deposit equal to the average billing for the previous twelve months, with a minimum service

deposit of \$100.00.

(Average Billing shall be based on all existing services:

Electric, Water, Sewer, Sales Tax, and any other applicable charges.)

New Commercial Installation:

Customer shall make a service deposit equal to two times the average monthly billing. The estimated KWH for billing shall be calculated by using the required KWH, if known, or if unknown, using a minimum of 15kw multiplied by 200 hours. The monthly average cost per kilowatt hour for commercial class customers shall be used in calculating the actual dollar amount of billing.

Industrial Customer:

Transfer of ownership of existing business:

Customer shall make a service deposit equal to two times the estimated monthly billing. The estimated KWH for billing shall be calculated by using the required KW multiplied by 200 hours. The average cost per kilowatt hour for Industrial Class Customers shall be used in calculating the actual dollar amount of billing.

A service deposit for electrical service shall be considered sufficient to cover water and/or sewer service, also. If a customer does not use City electric service, but does have City water service, then a service deposit shall be required. A water service deposit based upon meter size and utilizing two months average billing shall be required.

Service deposits in the following amounts shall be paid for these meter size services:

5/8 x 3/4 meter	\$20.00
3/4" meter.....	\$25.00
1" meter.....	\$70.00
1 2 " meter.....	\$150.00
2" meter.....	\$425.00
3" meter.....	\$575.00
4" meter.....	\$600.00

BE IT RESOLVED, that all motions and/or resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this resolution shall be in full force and effect immediately upon its adoption.

PASSED AND APPROVED this 13th day of December, 2006.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Schatz introduced Ordinance No. 1039. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Kirby seconded the motion. Voting AYE: Council members Lukassen, Hein, Smith, Schatz, Kirby, and Kroesing. Voting NAY: None. The motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1039 on the third and final reading. Council member Hein seconded the motion. Voting AYE: Council members Lukassen, Schatz, Smith, Kirby, Hein, and Kroesing. Voting NAY: None. The motion carried and Ordinance No. 1039 was passed and adopted as follows:

ORDINANCE NO. 1039

AN ORDINANCE AMENDING CHAPTER 3; SECTIONS 3-109, 3-215, 3-811, 3-812, AND 3-901 ONLY, CONCERNING DISCONTINUANCE OF SERVICE, NOTICE PROCEDURES, 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. That the following Sections of Chapter 3 of the David City Municipal Code Book be amended to read as follows:

§3-109 MUNICIPAL UTILITIES; DISCONTINUANCE OF SERVICE, NOTICE PROCEDURE. The bill for water delivered to a subscriber shall be due and payable on the first (1st) business day of the month. If the bill is not paid before five o'clock (5:00) p.m. on the tenth (10th) day of the month, it shall be considered delinquent. When the tenth (10th) day of the month falls on Saturday or Sunday, bills become delinquent at five o'clock (5:00) p.m. on the following Monday. The Municipality shall have the right to terminate service of any non-domestic subscriber at any time after said subscriber shall have a delinquent bill. When a domestic subscriber has a bill that has become delinquent, the Municipality shall, before service is disconnected, give the subscriber written notice by First Class Mail that the bill is delinquent and that service may be disconnected if payment is not received by a specified date. The Municipality may also personally distribute the disconnect notice with an additional delivery fee being assessed as set by resolution. Delinquent/Disconnect notices will be mailed after 5:00 p.m. on the tenth (10th) of the month or on the day the bill actually becomes delinquent. As per Nebraska Revised Statute Section 70-1605, the service shall not be discontinued for at least seven (7) working days after issuance of such "DELINQUENT/DISCONNECT NOTICE". If notice is given by First Class Mail, such mail shall be conspicuously marked as to its importance. As to any subscriber who has previously been identified as a welfare recipient to the utility by the Department of Public Welfare, such notice shall be by certified mail and notice of such proposed termination shall be given to the Department of Public Welfare.

The notice shall contain the following information:

1. The reason for the proposed disconnection;
2. A statement of the intention to disconnect unless the domestic subscriber either pays the bill or reaches an agreement with the Department regarding payment of the bill;

3. The date upon which service will be disconnected if the domestic subscriber does not take appropriate action;
4. The name, address, and telephone number of the employee or department to whom the domestic subscriber may address an inquiry or complaint;
5. The domestic subscriber's right, prior to the disconnection date, to request a conference regarding any dispute over such proposed disconnection;
6. A statement that the Department may not disconnect service pending the conclusion of the conference;
7. A statement to the effect that disconnection may be postponed or prevented upon presentation of a duly licensed physician's certificate which shall certify that the domestic subscriber or resident within such subscriber's household has an existing illness or handicap which would cause such subscriber or resident to suffer an immediate and serious health hazard by the disconnection of the utility's service to that household. Such certificate shall be filed with the Department of Utilities within five (5) days of receiving notice under this section and will prevent the disconnection of the Department's services for a period of thirty (30) days from such filing. Only one (1) postponement of disconnection shall be allowed under this subsection for each incidence of non-payment of any due account;
8. The cost that will be borne by the domestic subscriber for restoration of service;
9. A statement that the domestic subscriber may arrange with the Department for an installment payment plan;
10. A statement to the effect that those domestic subscribers who are welfare recipients may qualify for assistance in payment of their utility bill and that they should contact their caseworker in that regard; and
11. Any additional information not inconsistent with this section which has received prior approval from the Governing Body.

A domestic subscriber may dispute the proposed discontinuance of service by notifying the utility with a written statement that sets forth the reasons for the dispute and the relief requested. If a statement has been made by the subscriber, a conference shall be held before the utility may discontinue services.

This section shall not apply to any disconnections or interruptions of services made necessary by the utility for reasons of repair or maintenance or to protect the health or safety of the domestic subscriber or of the general public. (Ref. 70-1605 through 70-1610)

§3-215 MUNICIPAL UTILITIES: DISCONTINUANCE OF SERVICE. NOTICE PROCEDURE.

The Sewer Supervisor shall compute or cause to be computed, sewer rental bills based on water usage. The bill for sewer service provided to a subscriber shall be due and payable on the first (1st) business day of the month. If the bill is not paid before five o'clock (5:00) p.m. on the tenth (10th) day of the month, it shall be considered delinquent. When the tenth (10th) day of the month falls on Saturday or Sunday, bills become delinquent at five o'clock (5:00) p.m. on the following Monday. The municipality shall have the right to terminate service of any non-domestic subscriber at any time after said subscriber shall have a delinquent bill. When a domestic subscriber has a bill that has become delinquent, the Municipality shall, before service is disconnected, give the subscriber written notice by First Class Mail that the bill is delinquent and that service may be disconnected if payment is not received by the specified date. The Municipality may also personally distribute the disconnect notice with an additional delivery fee being assessed as set by resolution. The Municipality shall not disconnect the service for at least seven (7) working days after issuance of such "DELINQUENT/DISCONNECT NOTICE". If notice is given by First Class Mail, such mail shall be conspicuously marked as to its importance. As to any subscriber who has previously been identified as a welfare recipient to the utility by the Department of Public Welfare, such notice shall be by certified mail and notice of such proposed termination shall be given to the Department of Public Welfare.

The notice shall contain the following information:

1. The reason for the proposed disconnection;
2. A statement of the intention to disconnect unless the domestic subscriber either pays the bill or reaches an agreement with the Department regarding payment of the bill;
3. The date upon which service will be disconnected if the domestic subscriber does not take appropriate action;
4. The name, address, and telephone number of the employee or department to whom the domestic subscriber may address an inquiry or complaint;
5. The domestic subscriber's right, prior to the disconnection date, to request a conference regarding any dispute over such proposed disconnection;
6. A statement that the Department may not disconnect service pending the conclusion of the conference;
7. A statement to the effect that disconnection may be postponed or prevented upon presentation of a duly licensed physician's certificate which shall certify that the domestic subscriber or resident within such subscriber's household has an existing illness or handicap which would cause such subscriber or resident to suffer an immediate and serious health hazard by the disconnection of the utility's service to that household. Such certificate shall be filed with the Department of Utilities within five (5) days of receiving notice under this Section and will prevent the disconnection of the Department's services for a period of thirty (30) days from such filing. Only one (1) postponement of disconnection shall be allowed under this subsection for each incidence of non-payment of any due account;
8. The cost that will be borne by the domestic subscriber for restoration of service;
9. A statement that the domestic subscriber may arrange with the Department for an installment payment plan;
10. A statement to the effect that those domestic subscribers who are welfare recipients may qualify for assistance in payment of their utility bill and that they should contact their caseworker in that regard; and
11. Any additional information not inconsistent with this Section which has received prior approval from the Governing Body.

A domestic subscriber may dispute the proposed discontinuance of service by notifying the utility with a written statement that sets forth the reasons for the dispute and the relief requested. If a statement has been made by the subscriber, a conference shall be held before the utility may discontinue services.

This section shall not apply to any disconnections or interruptions of services made necessary by the utility for reasons of repair or maintenance or to protect the health or safety of the domestic subscriber or of the general public. (Ref. 70-1605 through 70-1610 et seq. RS Neb.)

§3-811 MUNICIPAL UTILITIES; DISCONTINUANCE OF SERVICE, NOTICE PROCEDURE.

The bill for electrical energy delivered to a subscriber shall be due and payable on the first (1st) business day of the month. If the bill is not paid before five (5:00) p.m. on the tenth (10th) day of the month, it shall be considered delinquent. When the tenth (10th) day of the month falls on Saturday or Sunday, bills become delinquent at five (5:00) p.m. on the following Monday. The Municipality shall have the right to terminate service of any non-domestic subscriber at any time after said subscriber shall have a delinquent bill. When a domestic subscriber has a bill that has become delinquent, the Municipality shall, before service is disconnected, give the subscriber written notice by First Class Mail that the bill is delinquent and that service may be disconnected if payment is not received by the specified date. The Municipality may also personally distribute the disconnect notice with an additional delivery fee being assessed as set by resolution. The Municipality shall not disconnect the service for at least seven (7) working days after issuance of such "DELINQUENT/DISCONNECT NOTICE". If notice is given by First Class Mail, such mail shall be conspicuously marked as to its importance. As to any subscriber who has previously been identified

as a welfare recipient to the utility by the Department of Public Welfare, such notice shall be by certified mail and notice of such proposed termination shall be given to the Department of Public Welfare.

The notice shall contain the following information:

1. The reason for the proposed disconnection;
2. A statement of the intention to disconnect unless the domestic subscriber either pays the bill or reaches an agreement with the Department regarding payment of the bill;
3. The date upon which service will be disconnected if the domestic subscriber does not take appropriate action;
4. The name, address, and telephone number of the employee or department to whom the domestic subscriber may address an inquiry or complaint;
5. The domestic subscriber's right, prior to the disconnection date, to request a conference regarding any dispute over such proposed disconnection;
6. A statement that the Department may not disconnect service pending the conclusion of the conference;
7. A statement to the effect that disconnection may be postponed or prevented upon presentation of a duly licensed physician's certificate which shall certify that the domestic subscriber or resident within such subscriber's household has an existing illness or handicap which would cause such subscriber or resident to suffer an immediate and serious health hazard by the disconnection of the utility's service to that household. Such certificate shall be filed with the Department of Utilities within five (5) days of receiving notice under this Section and will prevent the disconnection of the Department's services for a period of thirty (30) days from such filing. Only one (1) postponement of disconnection shall be allowed under this subsection for each incidence of non-payment of any due account;
8. The cost that will be borne by the domestic subscriber for restoration of service;
9. A statement that the domestic subscriber may arrange with the Department for an installment payment plan;
10. A statement to the effect that those domestic subscribers who are welfare recipients may qualify for assistance in payment of their utility bill and that they should contact their caseworker in that regard; and
11. Any additional information not inconsistent with this Section which has received prior approval from the Governing Body.

A domestic subscriber may dispute the proposed discontinuance of service by notifying the utility with a written statement that sets forth the reasons for the dispute and the relief requested. If a statement has been made by the subscriber, a conference shall be held before the utility may discontinue services.

This section shall not apply to any disconnections or interruptions of services made necessary by the utility for reasons of repair or maintenance or to protect the health or safety of the domestic subscriber or of the general public. (Ref. 70-1605 et seq. RS Neb.) (Amended by Ord. Nos. 588,10/27/82; 686, 11/23/87)

§3-812 MUNICIPAL UTILITIES; DISCONNECTS - RECONNECTS. A fee will be charged for personally delivering a disconnect notice. If the bill remains unpaid the service will be disconnected. There will also be a fee charged for the disconnection. Following the disconnection of a subscriber and prior to the re-connection of the electric service, the customer shall pay the delivery fee, disconnect fee, re-connect fee, and utility bills. Such fees shall be set by resolution, and the administrative policies governing them shall be established by the City Council and shall be on file at the City Office. The funds from these fees shall be used for the repair and maintenance of the Electric System.

§3-901 UTILITIES GENERALLY; DISCONTINUANCE OF SERVICE, NOTICE PROCEDURE. The bill for utilities delivered to a subscriber shall be due and payable on the first (1st) business day of the month. If the bill is not paid before five o'clock (5:00) p.m. on the tenth (10th) day of the month, it shall be considered delinquent. When the tenth (10th) day of the month falls on Saturday or Sunday, bills become delinquent at five o'clock (5:00) p.m. on the following Monday. The municipality shall have the right to terminate service of any non-domestic subscriber at any time after said subscriber shall have a delinquent bill. When a domestic subscriber has a bill that has become delinquent, the Municipality shall, before service is disconnected, give the subscriber written notice by First Class Mail that the bill is delinquent and that service may be disconnected if payment is not received by the specified date. The Municipality may also personally distribute the disconnect notice with an additional delivery fee being assessed as set by resolution. The Municipality shall not disconnect the service for at least seven (7) working days after issuance of such "DELINQUENT/DISCONNECT NOTICE". If notice is given by First Class Mail, such mail shall be conspicuously marked as to its importance. As to any subscriber who has previously been identified as a welfare recipient to the utility by the Department of Public Welfare, such notice shall be by certified mail and notice of such proposed termination shall be given to the Department of Public Welfare.

The notice shall contain the following information:

1. The reason for the proposed disconnection;
2. A statement of the intention to disconnect unless the domestic subscriber either pays the bill or reaches an agreement with the Department regarding payment of the bill;
3. The date upon which service will be disconnected if the domestic subscriber does not take appropriate action;
4. The name, address, and telephone number of the employee or department to whom the domestic subscriber may address an inquiry or complaint;
5. The domestic subscriber's right, prior to the disconnection date, to request a conference regarding any dispute over such proposed disconnection;
6. A statement that the Department may not disconnect service pending the conclusion of the conference;
7. A statement to the effect that disconnection may be postponed or prevented upon presentation of a duly licensed physician's certificate which shall certify that the domestic subscriber or resident within such subscriber's household has an existing illness or handicap which would cause such subscriber or resident to suffer an immediate and serious health hazard by the disconnection of the utility's service to that household. Such certificate shall be filed with the Department of Utilities within five (5) days of receiving notice under this Section and will prevent the disconnection of the Department's services for a period of thirty (30) days from such filing. Only one (1) postponement of disconnection shall be allowed under this subsection for each incidence of non-payment of any due account;
8. The cost that will be borne by the domestic subscriber for restoration of service;
9. A statement that the domestic subscriber may arrange with the Department for an installment payment plan;
10. A statement to the effect that those domestic subscribers who are welfare recipients may qualify for assistance in payment of their utility bill and that they should contact their caseworker in that regard; and
11. Any additional information not inconsistent with this Section which has received prior approval from the Governing Body.

A domestic subscriber may dispute the proposed discontinuance of service by notifying the utility with a written statement that sets forth the reasons for the dispute and the relief requested. If a statement has been made by the subscriber, a conference shall be held before the utility may discontinue services.

This section shall not apply to any disconnections or interruptions of services made necessary by the utility for reasons of repair or maintenance or to protect the health or safety of the domestic subscriber or of the general public. (Ref. 70-1605 et seq. RS Neb.) (Amended by Ord. No. 634, 1/23/85)

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 13th day of December, 2006.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Schatz introduced Ordinance No. 1040. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Kirby seconded the motion. Voting AYE: Council members Lukassen, Hein, Smith, Schatz, Kirby, and Kroesing. Voting NAY: None. The motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1040 on the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Schatz, Kirby, Hein, Smith, and Kroesing. Voting NAY: None. The motion carried and Ordinance No. 1040 was passed and adopted as follows:

ORDINANCES OF A GENERAL AND PERMANENT NATURE
of the
CITY OF DAVID CITY, NEBRASKA
ORDINANCE NO. 1040

An ordinance of the City of David City, Nebraska codifying the general ordinances of the Municipality, repealing prior ordinances in conflict herewith.

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

Section 1. Codification. The general ordinances of the Municipality of David City, Nebraska, are hereby codified into eleven chapters and the articles and sections thereunder, which are adopted and declared to be ordinances of this Municipality.

Section 2. Repeal of Prior Ordinances in Conflict. All ordinances and parts of ordinances of a general or permanent nature passed and approved prior to the passage and approval of this codification ordinance and in conflict with this ordinance or with any of the provisions of this ordinance, are hereby repealed; Provided, that in construing the provisions of this ordinance the following ordinances shall not be considered or held to be ordinances of a general or permanent nature, to-wit:

1. Ordinances vacating streets and alleys.
2. Ordinances authorizing or directing public improvements to be made.
3. Ordinances levying taxes or special assessments.
4. Ordinances granting any right, privilege, franchise, or license to persons, firms, or corporations.
5. Ordinances providing for the issuance of bonds or other instruments of indebtedness.
6. Ordinances establishing grades.
7. Real Estate Transactions.
8. Any other ordinance which by nature would be considered special.

Section 3. Exceptions. The repeal of ordinances as provided in Section 2, Ordinance No. 1040 shall not affect any rights acquired, fines, penalties, forfeitures, or liabilities incurred there under, or actions involving any of the provisions of such ordinances and parts thereof. Such ordinances above repealed are hereby continued in force and effect after the passage, approval and publication of this general codification ordinance for the purpose of all rights, fines, penalties, forfeitures, liabilities, and actions therefore.

Section 4. Defining Chapters, Articles, and Sections. The chapters, articles, and sections as set forth herein shall be and hereby are declared to be the chapters, articles, and sections of this general codification ordinance. All ordinances hereafter passed by the local Governing Body of the Municipality shall be numbered consecutively, beginning with No. 1041.

Section 5. Severability. If any section, subsection, paragraph, sentence, clause, phrase, term, or provision of this ordinance should be declared invalid by any court of competent jurisdiction for any reason whatsoever, such decision shall not affect the remaining portions of this code, which will remain in full force and effect, and the provisions of this ordinance are hereby declared to be severable.

Section 6. Blanket Penalty. Any person, his agents, or servants who shall violate any of the provisions of this Municipal code unless otherwise specifically provided herein, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding one hundred (\$100.00) dollars. Whoever aids, abets, procures, encourages, requests, advises, or incites another to commit any act which is an offense under this Code or under any other ordinance of the Municipality may be prosecuted and punished as though he were the principal offender.

Section 7. General Definitions:

1. Person. Whenever used in this code, the word person shall include natural persons, artificial persons, such as corporations, co-partnerships, associations, and all aggregate organizations of whatever character.
1. Gender and Number. All words used herein implying the masculine gender may apply to, and include the feminine or neuter gender and all words importing the plural may be applied to, and mean a single person, firm, or thing. All words importing the singular number may be applied to and mean the plural number.
2. Code, Ordinance, and Chapter. Municipal Code shall mean the General Codification Ordinance No. 1040. Ordinance and chapter are used synonymously unless from the context the contrary clearly appears.
3. Wholesale Dealer. The words wholesale dealer of sellers of said product at wholesale shall embrace and include manufacturers of any product who sell the said product to other persons for the purpose of future resale to consumers.
4. Municipal and Municipality. The words Municipal and Municipality whenever used in this code mean the City of David City, Nebraska, a Municipal Corporation.
5. Governing Body. The words Governing Body, whenever they appear in this Code mean the Mayor and City Council of the Municipality.
6. Mayor. The word Mayor means the Chief Administrative Official of the Municipality whenever it appears in this Code.
7. Municipal Police. Municipal Police shall mean any police officer of the Municipality whenever it appears in this Code.

Section 8. Time. Whenever words fixing or importing time or the hour of the day are used in this Code, they shall be construed to mean Central Standard Time or Central Daylight Savings Time whichever is applicable.

Section 9. Construction of Chapters, Articles, and Sections. For purposes of construction each chapter contained and arranged in this Code shall be considered as a separate and distinct ordinance grouped for convenience under the General Codification Ordinance No. 1040, each section appearing in the several chapters of this Code shall be considered a separate and distinct unit of legislation germane to the chapter or article under which it is grouped and each article appearing in the said chapters shall be considered as a group of legislative units germane to the chapter wherein it is placed. Any chapter, article, or section duly enacted by the Governing Body of the Municipality and included in this Code, and other independent ordinance, chapter, article, section, or subsection of an ordinance duly enacted shall be altered, amended, or revised only by the complete nullification and repeal of such ordinance, chapter, article, section, or subsection and by the substitution of a new ordinance, chapter, article, section, or subsection containing the entire ordinance, chapter, article, section, or subsection as amended, altered, or revised.

Section 10. Publication and Distribution. This code was printed in book form under the direction of the Governing Body, and shall be distributed as they may see fit. (*Ref. 17-613, 17-614 RS Neb.*)

Section 11. When Operative. This ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

Passed and approved this 13th day of December, 2006.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Schatz made a motion to authorize Mayor Smith to execute a letter of waiver concerning Henningsen Foods, Inc. Series 1998 Bonds. Council member Smith seconded the motion. Voting AYE: Council members Kirby, Hein, Kroesing, Lukassen, Smith, 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 December 1, 2006, 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 30, 2006 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, 2007.

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, 2007. The requirements will be reinstated on November 1, 2007.

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: Stephen Smith, Mayor

cc: US Bank, N.A., Trustee

Mayor Stephen Smith presented Certificates of Appreciation to Council members Mark Kirby (8 years – 1st Ward) and Gary Kroesing (16 years – 2nd Ward) for their years of dedicated

service to the City of David City. Council President Gary Smith then presented Mayor Smith with a Certificate of Appreciation for his twenty (20) years of dedicated service. Each received a round of applause. All three (3) had decided not to file for re-election.

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Hein seconded the motion. Voting AYE: Council members Schatz, Kirby, Lukassen, Smith, Hein, and Kroesing. Voting NAY: None. The motion carried and Mayor Smith declared the meeting adjourned at 8:15 p.m.

Mayor Stephen Smith

City Clerk Joan E. Kovar

CITY COUNCIL PROCEEDINGS

December 13, 2006

The organizational meeting of the Mayor and City Council of the City of David City, Nebraska, was held on December 13, 2006, in open public session in the meeting room of the City Office, 557 4th Street, David City, Nebraska, immediately following the regular meeting of the Mayor and City Council. 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.

City Attorney Jim Egr presented the Oath of Office to Mayor Dana Trowbridge, and Council members Rick Holland – 1st Ward, Bill Scribner – 2nd Ward, and incumbent Nick Hein – 3rd Ward, and they were seated.

Present for the meeting were: Mayor Dana Trowbridge, Council members Gary Smith, Rick Holland, Bill Scribner, Bill Schatz, Nick Hein, and Ted Lukassen, City Administrator Joe Johnson, City Attorney Jim Egr, Electric Supervisor Tim Kovar, Water/Sewer Supervisor Jim Kruse, Electric Plant Supervisor John Kabourek, Police Chief Stephen Sunday, Street Superintendent Jim McDonald, Park/Auditorium Supervisor Bill Buntgen, Zoning Administrator Roger Kotil, Deputy City Clerk Tami Comte, D.C. Middle School Principal Tom Jahde, and students Chris Kouba and Seth Behrens, Margaret Kitt, Max Birkel, Greg Sabata, Lonnie Davis, Bill Kozisek, Jim Vandenberg, Scott Steager, Stephen Smith, Gary Kroesing, Mark Kirby, Banner-Press Editor Larry Peirce, and City Clerk-Treasurer Joan Kovar.

Mayor Trowbridge called for election of City Council president. Council member Hein nominated Council member Bill Schatz. Council member Scribner nominated Council member Gary Smith. Council member Holland made a motion that nominations cease. Council member Schatz seconded the motion. All of the council members were present, all voted AYE, and the motion carried. Ballots were distributed for the election of council president. Mayor Trowbridge counted the ballots that resulted in a tie. City Attorney Egr stated that State Statute says "*The mayor shall preside at all meetings of the city council, and may vote when his or her vote shall be decisive and the council is equally divided on any pending matter, legislation, or transaction, and the mayor shall, for the purpose of such vote, be deemed to be a member of the council.*" Mayor Trowbridge voted for Gary Smith and declared Gary Smith as Council President.

Mayor Trowbridge noted that the City Council receives agenda packets prior to the Council meetings. Trowbridge stated that he has high expectations of the Council; he expects them to read the packet information, be well informed, and be prepared to conduct business.

Mayor Trowbridge announced the appointed of Department Heads, Police Chief and Officers, and other appointed officials. Council member Smith made a motion to approve the appointments as presented. Council member Hein seconded the motion. All of the Council members were present, all voted AYE, and the appointments were approved as follows:

APPOINTED OFFICIALS
December 13, 2006

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
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

Mayor Trowbridge asked for Petitions, Communications and Citizens' Concerns. There were none. Following discussion, Mayor Trowbridge stated there will not be a Committee of the Whole meeting in December.

Tom Jahde, David City Middle School Principal and students Seth Behrens and Chris Kouba were present. David City Middle School is doing a project that divides the middle school students into five (5) houses. Seth and Chris are members of the Blue House. The houses/groups teach the students to work together, and they compete with the other houses. They are rewarded with fake money for good grades or projects, but receive red money for bad grades, missed deadlines, or below standard projects. Therefore, if one student is not doing well the other students encourage him/her to do better. One of the house projects is to do a community project and present it for approval. Seth reported that after using the track for the past few years since the track was resurfaced, the shot put area of the track, especially on rainy days, is in need of improvement. They are suggesting that the sector be smaller with a 60' throwing length. They are proposing that 4-6 inches of soil be brought in to raise the level of the throwing surface, and then cover that soil with a couple inches of clay soil and an inch of crushed red brick. This would improve the condition of the shot put area and the overall appearance of the track facility. The work would probably be done on a Saturday in March or April. Most of the work would be done by the members of the Blue House of the David City Public School, the house advocates, and parents of the students. They are hoping to secure grant funds to help with the project, however, it may require some of Park Supervisor Bill Buntgen's time to oversee the entire project. Jahde stated that the dirt and clay is not expensive but he won't know the cost of the crushed red brick until tomorrow. Jahde estimates the cost of the project to be \$500 - \$1,000. Jahde asked if the city would be willing to drive to Yankee Hill Brick to pick up supplies and also asked if the city would proceed with the project if grant money is not available. The Council stated that they would appreciate firm costs for the shot put project and therefore asked Jahde, Behrens, and Kouba, to attend the January 10th council meeting to provide cost estimates and grant information.

City Administrator Joe Johnson reported that only one bid was received for a 2007 police sedan and therefore the bid was not opened. The bid will be returned unopened. City Administrator Johnson will get state bids for a police vehicle. Council member Hein made a motion to table consideration of purchasing a police car to the January 10, 2007, council meeting so the bid process can be re-opened. Council member Smith seconded the motion. All of the Council members were present, all voted AYE, and the motion carried.

City Administrator Joe Johnson reported that no bids were received for the handicapped fishing pier to be constructed on the west David City Park Lake. Council member Schatz made a motion to table consideration of approving a bid for the handicapped fishing pier to the January 10, 2007, council meeting so that the City can solicit for formal bids. Council member Hein seconded the motion. All of the Council members were present, all voted AYE, and the motion carried.

Henningsen Foods, Inc. has filed a petition for the creation of a Street Improvement District to repair "D" Street between 3rd Street and the Burlington/Santa Fe Railroad.

Darrell Kahler of Henningsen Foods stated that water is a major concern as there are definite drainage problems in this area. Henningsen Foods is the only one who signed the petition. Kahler stated that Frontier Cooperative supports the project but did not sign the petition. Eldon Coufal previously replaced concrete in front of his building and therefore did not sign the petition.

Much discussion followed. The Council also discussed addressing "D" Street between 3rd and 4th Street. It was noted that the United States Post Office cannot be assessed and this would be the City's expense.

Council member Scribner made a motion to approve the petition of Henningsen Foods Inc., to create a Street Improvement District for "D" Street between 3rd Street and the Burlington/Santa Fe Railroad. Council member Smith seconded the motion. Voting AYE: Council members Hein, Lukassen, Smith, and Scribner. Voting No: Council member Schatz. Council member Holland abstained. The motion carried.

Representatives of the Volunteer Fire Department attended the November 27, 2006, Committee of the Whole meeting. The firemen made it clear that time is of the essence when responding to an emergency, and because of a limited amount of parking spaces available in close proximity to the Fire Department, designated parking stalls are needed. Fire Chief Matt Hilger recommended that the parking stalls in front of Windstream, 591 D Street, be designated as "Fire Department Parking Only".

Council member Lukassen made a motion to designate "Emergency Vehicle Parking Only" in front of the Windstream building located at 591 D Street, contingent upon the David City Volunteer Fire Department paying the cost of the signs. Council member Holland seconded the motion. It was noted that the fire department volunteers should have stickers on their cars to designate them as emergency vehicles. Voting AYE: Council members Scribner, Smith, Holland, Lukassen, Hein, and Schatz. Voting NAY: None. The motion carried.

Mayor Trowbridge asked for two council members to serve on the Finance Committee. Council members Gary Smith and Ted Lukassen volunteered. Council member Hein made a motion to appoint Council members Gary Smith and Ted Lukassen to serve on the Finance Committee. Council member Scribner seconded the motion. All of the Council members were present, all voted AYE, and the motion carried.

There being no further business to come before the Council, Council member Hein made a motion to adjourn. Council member Smith seconded the motion. Voting AYE: Council members Schatz, Holland, Scribner, Lukassen, Smith, and Hein. Voting NAY: None. The motion carried and Mayor Trowbridge declared the meeting adjourned at 9:45 p.m.

Mayor Dana Trowbridge

City Clerk Joan E. Kovar

