

CITY COUNCIL PROCEEDINGS

June 8, 2005

The City Council of the City of David City, Nebraska met in open public session in the meeting room of the City Office, 557 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner-Press on June 2, 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 Kroesing, Ted Lukassen, Nick Hein, Gary Smith, and Bill Schatz, City Administrator Jeff Fiegenschuh, City Attorney Jim Egr, Police Chief Stephen Sunday, Water/Sewer Supervisor Jim Kruse, Tim Kozisek, Scott Steager, Erik Peterson, Larry J. Sabata, Jolene Fichtl, Jerry Kosch, Banner Press Editor Larry Peirce, and City Clerk-Treasurer Joan E. Kovar. Council member Mark Kirby, and Youth Council members Audra Duren and Nolan Moravec were absent.

The meeting opened with the Pledge of Allegiance.

The minutes of the May 11, 2005 meeting of the Mayor and City Council were approved upon a motion by Council member Lukassen and seconded by Council member Kroesing. Voting AYE: Council members Hein, Schatz, Smith, Kroesing, and Lukassen. Voting NAY: None. Council member Kirby was absent. The motion carried.

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

Mayor Smith asked for consideration of claims. The claim to Midwest Service and Sales Co., for a 96" Arch 5x1 30' SCMP 12 GA Spirol Culvert in the amount of \$2,843.10 was discussed. It was questioned if the culvert was still needed, or if not, if it could be returned. It was noted that there could possibly be a restocking fee and freight charges. As Street Superintendent McDonald was not present at the meeting, City Administrator Fiegenschuh called and asked him to come to the Council meeting to discuss this claim. Therefore, Council member Schatz made a motion to table consideration of the claims. Council member Hein seconded the motion. Voting AYE: Council members Smith, Kroesing, Lukassen, Hein, and Schatz. Voting NAY: None. Council member Kirby was absent. The motion carried.

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

Police Chief Sunday reported that the City cleaned up the Terry Colburn property located at 1255 9th Street and therefore there will be a bill to consider next month.

Pool Manager Rachelle Robbins is moving to Arizona the end of July, so the pool committee will have to consider how this vacancy will be handled.

City Clerk Kovar's monthly report stated "We were instructed by the Council to mail out the water meter reading cards again in June. When I mentioned this to WA/SE Supervisor Jim

Kruse he said that it will be a waste of time and money because they haven't gotten through the last batch yet. What do you want us to do???" Following discussion the Council decided to wait until June, 2006 to mail out the water meter reading cards again.

The property legally described as the East Eighty feet (E80') of Lot Five (5) in Block Three (3), Miles Second (2nd) Addition to David City, was sold at public auction. An ordinance will be on the July council meeting to finalize this sale.

It was questioned where the youth council members are. It was noted that neither of the youth council members were present at the last Committee of the Whole meeting, and neither are present for the Council meeting. It was reported that Audra Duren is in Europe.

Mayor Smith scheduled a Committee of the Whole meeting for Monday, June 27, 2005 at 6:00 p.m. in the City Office meeting room, which will be immediately followed by a Pool Committee meeting. A budget meeting is scheduled for Tuesday, June 28, at 6:00 p.m..

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

Council member Kroesing made a motion to advance to agenda item #15 - Consideration of a Resolution to approve the Butler County Local Emergency Operations Plan. Council member Lukassen seconded the motion. Voting AYE: Council members Hein, Schatz, Smith, Kroesing, and Lukassen. Voting NAY: None. Council member Kirby was absent. The motion carried.

The Butler County Local Emergency Operations Plan establishes the policies, plans, guidelines and procedures that will allow all our emergency resources to function effectively, as a team, when disaster strikes. Scott Steager reported that the plan is revised every five years.

Council member Kroesing made a motion to pass and adopt Resolution No. 7 - 2005 approving the Butler County Local Emergency Operations Plan. Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Hein, Schatz, Smith, and Kroesing. Voting NAY: None. Council member Kirby was absent. The motion carried and Resolution No. 7 - 2005 was passed and adopted as follows:

RESOLUTION NO. 7 - 2005

That in order to provide for a coordinated response to a disaster or emergency in Butler County, the City of David City and other cities and villages in Butler County, the David City Council deems it advisable and in the best interests of the community and Butler County to approve the attached Butler County Local Emergency Operations Plan.

Passed and approved this 8th day of June, 2005.

Mayor Stephen Smith
City of David City

City Clerk Joan E. Kovar

Street Superintendent Jim McDonald arrived and stated that the culvert was to be located on property between 1st Street and Road "M" and South of the Union Pacific Railroad. McDonald is unsure at this time whether than will transpire or not. After discussion, it was decided to keep the culvert and pay for the culvert out of the Contingency Fund. Therefore, Council member

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

Council member Kroesing made a motion to advance to agenda item #11 - Consideration of allocating \$5,000 in CDBG Funds to "Flower Designs by JF" for a new coffee shop. Council member Hein seconded the motion. Voting AYE: Council members Smith, Schatz, Lukassen, Hein, and Kroesing. Voting NAY: None. Council member Kirby was absent. The motion carried.

Council member Lukassen made a motion to accept the committee recommendation to allocate \$5,000 in CDBG Reuse Funds to "Flower Designs by JF" for a coffee shop in conjunction with their flower shop located at 420 E Street. Council member Hein seconded the motion. Voting AYE: Council members Smith, Schatz, Kroesing, Hein, and Lukassen. Voting NAY: None. Council member Kirby was absent. The motion carried.

Council member Hein made a motion to advance to agenda item #8 - Re-consideration of the placement of the sewer main for Sabata's Second Addition. Council member Smith seconded the motion. Voting AYE: Council members Schatz, Kroesing, Lukassen, Smith, and Hein. Voting NAY: None. Council member Kirby was absent. The motion carried.

At the May 11, 2005 Council meeting, the Council agreed that the City will extend the Sewer main on the east side of 11th Street to "O" Street but will not extend the Water and Sewer mains to the east. Larry Sabata was present and requested that the sewer main be extended to the east, between Sabata's 1st and 2nd Additions along the south easement of Lot 10, Sabata's 2nd Addition, to the easement at the east side of Lot 10, and then proceed north in the easement area to "O" Street instead of only extending the sewer main north parallel with 11th Street. Larry stated that he would pay for the estimated 130' extension of the sewer main from the front, in the easement on the south side of Lot 10 in Sabata's 2nd Addition, to the rear (alley) easement. A Sewer Improvement District was discussed. Discussion followed. Council member Lukassen made a motion to 1) approve changing the location of the sewer main extension so that it travels east in the easement area between Lot 1 of Sabata's 1st Addition and Lot 10 of Sabata's 2nd Addition to the easement area on the east side (back) of Lot 10 then continue to the north in the easement area, 2) the approximate 130' extension of the sewer main from 11th Street to the easement at the rear of Lot 10 will be at Larry Sabata's expense, 3) a Sewer Improvement District will be formed with the costs assessed against the lots, and 4) Larry Sabata will provide a surety bond to cover 110% of the costs of the sewer extension. Council member Kroesing seconded the motion. Voting YEA: Council members Hein, Smith, Schatz, Kroesing, and Lukassen. Voting NAY: None. Council member Kirby was absent. The motion carried.

Council member Smith made a motion to pass Ordinance No. 996 on the third and final reading. Council member Kroesing seconded the motion. Voting AYE: Council members Lukassen, Schatz, Hein, Kroesing, and Smith. Voting NAY: None. Council member Kirby was absent. The motion carried and Ordinance No. 996 was passed on 3rd and final reading as follows:

ORDINANCE NO. 996

AN ORDINANCE PROVIDING FOR THE ANNEXATION OF PHASE 2 OF SABATA'S ADDITION CONSISTING OF FIVE LOTS ALONG 11TH STREET JUST NORTH OF SABATA'S 1ST ADDITION, LEGALLY DESCRIBED BELOW, REPEALING ANY ORDINANCES IN

CONFLICT HERewith; DESCRIBING THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT, AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

WHEREAS, a majority of the City Council of the City of David City, Nebraska, favors the annexation of the following described real property and the extension of the city limits to include said property, as follows:

A tract of land located in the N ½ of the NW ¼ of Section 20, T15N, R3E of the 6th P.M. in Butler County, Nebraska, described as follows:

Beginning at the northwest corner of the N ½ of the NW ¼ of Section 20, T15N, R3E of the 6th P.M. in Butler County, Nebraska, and assuming the north line of said N ½ of the NW ¼ to have a bearing of N 90_00'00" E; thence N 90_00'00" E and on said north line, 152.97 feet; thence S 00_57'20" E, 551.05 feet to the northeast corner of Lot 1, Block A, Larry J. Sabata 1st Addition; thence S 89_58'32" W and on the north line of said Lot 1, 152.94 feet, to the west line of the N ½ of the NW ¼ of said Section 20; thence N 00_57'31" W and on said west line, 551.10 feet, to the point of beginning, containing 1.94 acres, more or less. (consisting of five lots along the east side of 11th Street south of "O" Street)

Comment [COMMENT1]:

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

Section 1. That the boundaries of the City of David City, Nebraska, be amended and changed in order to include the above described property.

Section 2. That this Ordinance be filed with the Office of the County Assessor and County Clerk of Butler County, Nebraska, and that the City Clerk be directed to amend the plat filed in her office to show the inclusion of the real estate listed above and that the boundary of David City as amended by this Ordinance be certified and placed on record in the office of the City Clerk of David City, Nebraska.

Section 3. That any Ordinance, setting or establishing boundaries of the City of David City, Nebraska, which is in conflict with this Ordinance be and the same is hereby repealed.

Section 4. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage as provided by law.

Passed and approved this 8th day of June, 2005.

ATTEST:

Mayor Stephen Smith

City Clerk Joan E. Kovar

Mayor Smith declared a ten minute recess at 8:25 p.m. The meeting resumed at 8:35 p.m.

Council member Hein made a motion to advance to agenda item #13 - Consideration of a Resolution regarding the request of Bob Wright to combine Lot Eight (8) of East Park Meadows

Addition and Tract II (Multi-purpose Land A) to form one lot. Council member Lukassen seconded the motion. Voting AYE: Council members Schatz, Kroesing, Smith, Lukassen, and Hein. Voting NAY: None. Council member Kirby was absent. The motion carried.

Council member Smith introduced Resolution No. 8 - 2005 and moved for its passage and adoption. Council member Lukassen seconded the motion. Voting YEA: Council members Schatz, Hein, Kroesing, Lukassen, and Smith. Voting NAY: None. Council member Kirby was absent. The motion carried and Resolution No. 8 - 2005 was passed and adopted as follows:

RESOLUTION NO. 8 - 2005

WHEREAS, Robert and Neta Wright, have filed a request to combine Lot Eight (8) and a tract of land located in multi-purpose land described as follows: Beginning at the NE corner of Lot 8 of said addition; thence easterly, 21.16 feet, on a 160 foot radius curve to the left, concave northerly, said curve being the southerly line of Bemis Drive; thence southerly, 59.02 feet, on a line 21.00 feet east of and parallel with the east line of said Lot 8, to a point on the southeasterly line of said Addition; thence southwesterly, 26.99 feet, on the southeasterly line of said Addition, to the SE corner of said Lot 8; thence northerly, 73.72 feet, to the point of beginning, containing 0.03 acres, more or less, all in East Park Meadows Addition, David City, Butler County, Nebraska, to form one lot.

WHEREAS, there were no objections expressed concerning combining Lot 8 and 21.16 feet of land located in multi-purpose land, all in East Park Meadows Addition to David City, Butler County, Nebraska.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the request of Robert and Neta Wright, to combine Lot 8 and 21.16 feet of land located in multi-purpose land, all in East Park Meadows Addition, David City, Butler County, Nebraska, to form one lot, is hereby approved.

Dated this 8th day of June, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

BEMISDRIVE

and the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Hein, Lukassen, Smith, and

Schatz. Voting NAY: None. Council member Kirby was absent. The motion carried.

s and adopt Ordinance No. 1004 on the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Schatz, Hein, Smith, and Kroesing. Voting NAY: None. Council member Kirby was absent. The motion carried and Ordinance No. 1004 was passed and adopted as follows:

ORDINANCE NO. 1004

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, CREATING A CERTAIN STREET IMPROVEMENT DISTRICT WITHIN THE CITY OF DAVID CITY, NEBRASKA, TO BE KNOWN AS STREET IMPROVEMENT DISTRICT NO. 3 - 2005; DEFINING THE BOUNDARIES OF SAID DISTRICT AND THE PROPERTY CONTAINED THEREIN; PROVIDING FOR THE CONSTRUCTION OF IMPROVEMENTS AND SUCH OTHER WORK AS MAY BE INCIDENTAL THERETO, DESCRIBING THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT, AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

percent of the resident owners, owning property directly abutting upon the street proposed to be improved being presented and filed with the City Clerk of David City, Nebraska, petitioning therefore, the Mayor and City Council find and determine said petitions are sufficient and adequate and there is hereby created within said City of David City, Nebraska, a Street Improvement District No. 3 - 2005.

Section 1. That pursuant to a petition signed by more than sixty percent of the resident owners, owning property directly abutting upon the street proposed to be improved, being presented and filed with the City Clerk of David City, Nebraska, petitioning therefore, the Mayor and City Council find and determine said petition is sufficient and adequate.

Street Improvement District No. 3 - 2005:

“L” Street between 3rd and 4th Streets.

The following street within Street Improvement District No. 3 - 2005 shall be and is hereby ordered improved by improvements consisting of grading, concrete curb and gutter, concrete surface, and such other work as may be incidental thereto:

“L” Street between 3rd and 4th Streets

including the intersection and the areas formed by the crossing of avenues and alleys.

Section 2. All of said improvements shall be constructed in accordance with plans and specifications to be made by engineers for the City and to be approved by the City Council.

Section 3. That the cost of such curb and gutter and street improvements included in Street Improvement District No. 3 - 2005, shall be levied and assessed against the property's in said district benefitted thereby in proportion to the benefits thereof, which tax and assessments shall constitute a lien on said property.

Section 4. This ordinance shall be in full force and effect from and after its passage

according to law.

PASSED AND ADOPTED this 8th day of June, 2005.

Mayor Stephen Smith

consideration of an easement for a drainage ditch in Holoubek's "Dove West Addition" (property located between 1st Street and Road M and South of the Union Pacific Railroad. Council member Kroesing seconded the motion. Voting YEA: Council members Smith, Schatz, Lukassen, Kroesing, and Hein. Voting NAY: None. Council member Kirby was absent. The motion carried.

knowledge and accept the letter from Mark Holoubek dated May 17, 2005 which stated "Please be notified that I wish to withdraw my Preliminary Plat of the Dove West Addition in David City, NE with this letter. Regards, Mark Holoubek." Council member Smith seconded the motion. Voting AYE: Council members Hein, Lukassen, Schatz, Smith, and Kroesing. Voting NAY: None. Council member Kirby was absent. The motion carried.

the application of Scott T. Samek for a permit to sell permissible fireworks at retail at 375 Nebraska Street (Amigo's parking lot), David City, Nebraska. Council member Kroesing seconded the motion. Voting AYE: Council members Schatz, Lukassen, Smith, Kroesing, and Hein. Voting NAY: None. Council member Kirby was absent. The motion carried.

the application of the Chamber of Commerce for a public fireworks display in the City Park in conjunction with the July Jam celebration scheduled for Saturday, July 9th. Council member Smith seconded the motion. Voting AYE: Council members Schatz, Lukassen, Kroesing, Smith, and Hein. Voting NAY: None. Council member Kirby was absent. The motion carried.

the firework permit request from the David City Jaycees. Kovar made several attempts to find out who was in charge of the Jaycees but

was an agenda item just in case the application was received at the last minute. City Attorney Egr advised that without the application and proof of a State License the City could not act on this.

and the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Hein, Kroesing, Smith, and Schatz. Voting NAY: None. Council member Kirby was absent. The motion carried.

Ordinance No. 1001 amending Chapter 8: Public Ways and Property of the David City Municipal Code Book on

the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Hein, Lukassen, Smith, and Schatz. Voting NAY: None. Council member Kirby was absent. The motion carried and Ordinance No. 1001 was passed on 3rd and final reading as follows:

ORDINANCE NO. 1001

AN ORDINANCE AMENDING CHAPTER 8; PUBLIC WAYS AND PROPERTY OF THE DAVID CITY MUNICIPAL CODE BOOK; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

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

Chapter 8

PUBLIC WAYS AND PROPERTY

Article 1. Municipal Property

DEFINITIONS. The following definitions shall be applied throughout this dictionary usage of the word shall apply.

used herein, shall mean that portion of a street between curb lines and adjacent property lines.

MUNICIPAL PROPERTY; MAINTENANCE AND CONTROL. The Governing 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.*)

MUNICIPAL PROPERTY; SALE AND CONVEYANCE.
(1) Except as provided in subsection (4) of this section, the power of the Municipality to including land used for park purposes and public squares, except real property used in the operation of public utilities, shall be exercised

by sealed bid of 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:

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

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 (3rd) 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.*)

MUNICIPAL PROPERTY; OBSTRUCTIONS. Trees and shrubs, growing upon, 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 collected as special taxes in addition 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.*)

MUNICIPAL PROPERTY; PERMITTED OBSTRUCTIONS. Persons engaged in 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.

MUNICIPAL PROPERTY; WEEDS. It is hereby the duty of the Police Chief or his agent to maintain sidewalk space within the corporate limits for growing weeds during the growing season, and if rank and noxious weeds are found growing thereon, he shall notify the owner or occupant thereof, to cut down such weeds as close to the ground as can be practicably done and keep the weeds cut thereon in like manner during the growing season for weeds; provided, any weeds growing in excess of twelve (12") inches shall be considered a violation of this section. In the event that the owner of any lot or parcel of land within the Municipality is a nonresident of the Municipality or cannot be found therein the notice may be given to any person having the care, custody or control of such lot or parcel of land. In the event that there can be found no one within the Municipality to whom notice can be given, it shall be the duty of the Street Superintendent or his agent to post a copy of the notice on the premise and then to cut or cause the weeds thereon to be cut as therein provided and report the cost thereof in writing to the Governing Body. The cost shall then be audited and paid by the Municipality and the amount thereof shall be assessed against the lot or parcel of land as a special tax thereon and shall be collected as are other taxes of the Municipality or may be recovered by civil suit brought by the Municipality against the owner of the parcel of land. 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.

MUNICIPAL PROPERTY; CANOPIES OR AWNINGS EXTENDING OVER THE SIDEWALK. All canopies or awnings hereafter erected or allowed to remain shall be made of sturdy material and wherever possible on iron frames. All canopies and awnings shall be elevated at least seven (7') feet at the lowest part from the top of the public sidewalk and shall not project over said sidewalk to exceed three-fourths (3/4) of the width thereof. They shall be supported without posts by iron brackets or by an iron framework attached firmly to the building, so as to leave the sidewalk wholly unobstructed; provided, nothing herein shall be construed to prevent the owner of any building from constructing a substantial awning or marquee of noncombustible material

shall be located flush with the outer edge thereof and if permission in writing shall have first been secured from the Mayor and Council.

MUNICIPAL PROPERTY; MAINTAIN CLEARANCE ABOVE WALKS AND STREETS; NOTICE; UNLAWFUL REMOVAL OF TREES AND SHRUBS; PERMIT; NON-LIABILITY.

The Street Superintendent or his/her duly authorized agent may require the trimming of trees or shrubs growing upon any lot, lots or lands within the Municipality, or upon the streets, alleys or sidewalk space abutting upon any lot, lots or lands by the owners of said lot, lots or lands or from the streets, alleys or sidewalk space abutting thereon. The owner or occupant of any lot, piece, or parcel of ground abutting or adjacent to any sidewalk or street over which there extends the branches of any tree shall at all times keep the branches or limbs thereof trimmed to the height of at least eight (8') feet above the surface of any sidewalk or at least fourteen (14') feet above the surface of any street.

The Municipal Clerk shall give the property owner or owners notice by personal service to trim trees or shrubs and overhanging branches as required herein. In the event said owner or owners fail, neglect or refuse to trim trees or shrubs and overhanging branches as required herein within fifteen (15) days after notice has been given, the Street Superintendent or his/her duly authorized agent shall trim trees or shrubs or overhanging branches as required herein, and shall assess the cost upon the lot, lots, or lands. The assessments shall be collected as are other taxes of the Municipality.

It shall be unlawful for any person to cut down or destroy any trees or shrubs growing within the sidewalk space, street, or on any other Municipal property without first making a written or verbal application to, and receiving a written permit from the Street Superintendent or his/her agent. Trees or shrubs removed upon receiving a permit shall be at the expense of the permit holder. Any person violating the section shall be guilty of a misdemeanor and shall be fined not more than one hundred (\$100.00) dollars for each violation.

The City at its own option may cut down or destroy any trees or shrubs growing within the sidewalk space, street or on any other Municipal property at its own expense.

Nothing in this section shall be deemed to impose any liability upon the City or upon any of its officers or employees nor to relieve the owner and occupant of any private property from the duty to keep trees and shrubs upon private property or under his/her control in a safe condition. (Ref. 17-555 RS Neb.)

MUNICIPAL PROPERTY; SPECIAL IMPROVEMENT DISTRICT; ASSESSMENT AND CREATION PROCEDURE.

The Municipality's Governing Body shall have power to create a special improvement district for the purpose of replacing, reconstructing, or repairing an existing street, alley, water line, sewer line, or any other such improvement.

Except as provided in sections 19-2428 to 19-2431 RS Neb., the Governing Body shall have power to assess, to the extent of such benefits, the cost of such improvements upon the properties found especially benefitted thereby, whether or not such properties were previously assessed for the same general purpose. In creating such special improvement district, the Governing Body shall follow procedures applicable to the creation and assessment of the same type of improvement district as otherwise provided by law. (Ref. 18-1751 RS Neb.) (Ord. No. 689, 12/30/87)

MUNICIPAL PROPERTY; IMPROVEMENT DISTRICT; LAND ADJACENT.

The Municipality may include land adjacent to such Municipality when creating an improvement district, such as a sewer, paving, water, water extension, or sanitary sewer extension district. The Governing Body shall have power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefitted thereby, except as provided in section 8-316. (Ref. 19-2427 RS Neb.) (Ord. No. 690, 12/30/87)

STREETS; DEFERRAL FROM SPECIAL ASSESSMENTS.

Whenever the Governing Body creates an improvement district as specified in Sections 8-110 and 8-311 which includes land adjacent to the Municipality which is within an agricultural use zone and is used exclusively for agricultural use, the owners or record title of such adjacent land may apply for a deferral from special assessments. For purposes of this Section, the terms agricultural use and agricultural use zone shall have the meaning specified in Section 77-1343 Reissue Revised Statutes of Nebraska 1943.

Any owner of record title eligible for the deferral granted by this Section shall, to secure such assessment, make application to the Governing Body of the Municipality within ninety (90) days after creation of an improvement district as specified in Sections 8-110 and 8-311. Any owner of record title who makes application for the deferral provided by this Section shall notify

the County Register of Deeds of such application in writing prior to approval by the Governing Body. The Governing Body shall approve the application of any owner of record title upon determination that the property (a) is within an agricultural use zone and is used exclusively for agricultural use, and (b) the owner has met the requirements of this Section.

The deferral provided for in this Section shall be terminated upon any of the following events:

1. Notification by the owner of record title to the Governing Body to remove such deferral;
2. Sale or transfer to a new owner who does not make a new application within sixty (60) days of the sale or transfer, except as provided in subdivision 3 of this Section.
3. Transfer by reason of death of a former owner to a new owner who does not make application within one hundred twenty-five (125) days of the transfer;
4. The land is no longer being used a agricultural land; or
5. Change of zoning to other than an agricultural zone.

Whenever property which has received a deferral pursuant to this Section becomes disqualified for such deferral, the owner of record title of such property shall pay to the Municipality an amount equal to:

- A. The total amount of special assessments which would have been assessed against such property, to the extent of special benefits, had such deferral not been granted; and
- B. Interest upon the special assessments not paid each year at the rate of six (6%) percent from the dates at which such assessment would have been payable if no deferral had been granted.

In cases where the deferral provided by this Section is terminated as a result of a sale or transfer described in subdivision 2 or 3 of this Section the lien for assessments and interest shall attach as of the day preceding such sale or transfer. (*Ref. 19-2428 thru 19-2431 RS Neb.*) (*Ord. No. 691, 12/30/87*)

MUNICIPAL PROPERTY; ACQUISITION OF REAL PROPERTY. When eminent domain, the Municipality shall do so only after the Governing Body has authorized the acquisition by action taken in a public meeting after notice and public hearing. (*Ref. 18-1755 RS Neb.*) (*Ord. No. 854, 4/8/98*)

Article 2. Sidewalks

SIDEWALKS; OVERHANGING BRANCHES. The owner or occupant of any lot, street or sidewalk over which there extends the branches of trees shall at all times keep the branches or limbs thereof trimmed to the height of at least eight (8') feet above the surface of said street or walk. Whenever the limbs or branches of any tree or trees extend over streets or sidewalks contrary to the provisions herein so as to interfere with the lighting of the street from street lights, or with the convenience of the public using said street or sidewalk, the Governing Body at any regular or special meeting may pass a resolution ordering the owner or occupant to cut or remove said obstructions within five (5) days after having received a copy thereof from the Street Superintendent stating that the Municipality will remove said branches and charge the costs thereof to the owner or occupant as a special assessment for improvements as herein provided, if said resolution is not complied with. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of

certified mail, return receipt requested to the last known address of the non-resident 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. 17-557.01 RS Neb.)

SIDEWALKS; KEPT CLEAN. It shall be unlawful for the occupant of any lot or corporate limits to allow snow, sleet, mud, ice, or other substance to accumulate on the sidewalks or to permit any snow, sleet, ice, mud, or other substance to remain upon said sidewalk. All sidewalks within the business district shall be cleaned within five (5) hours after the cessation of a storm, unless the storm or fall of snow shall have taken place during the night, in which case the sidewalk shall be cleaned before eight-thirty (8:30) o'clock A.M. the following day; Provided, sidewalks within the residential areas of the Municipality shall be cleaned within twenty-four (24) hours after the cessation of the storm. (Ref. 17-557 RS Neb.)

SIDEWALKS; MAINTENANCE. Every owner of any lot, lots, or piece of land shall maintain the sidewalk along and contiguous to said lot, lots, or pieces of land, as the case may be, in good and proper repair, and in a condition reasonably safe for travel for all travelers thereon. In the event that the owner or owners of any lot, lots, or lands, abutting on any street, avenue, or part thereof shall fail to construct or repair any sidewalk in front of his, her, or their lot, lots, or lands, within the time and in the manner as directed and required herein after having received due notice to do so, they shall be liable for all damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk, and the Governing Body shall have power to cause any such sidewalks to be constructed or repaired and assess the costs thereof against such property. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against the 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 non-resident property owner. The last known

tax rolls at the time such required notice was first published. (Ref. 17-557.01 RS Neb.)

SIDEWALKS; REPAIR. The Municipal official in charge of sidewalks may give notice to the owners of property upon which such sidewalks in disrepair are located shall require within forty-eight (48) hours from issuance of notice said owners to make arrangements to have the sidewalk repaired. Said repairs shall be completed within twenty-one (21) days after issuance of said notice. No special assessment shall be levied against the property unless said owner shall neglect or refuse to repair within the time prescribed and in the event that such owner fails to repair, the Municipality shall cause the repairs to be made and assess the property owner the expense of such repairs. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

SIDEWALKS; CONSTRUCTION BY OWNER. Sidewalks shall be constructed along the front property line where the side property line is adjacent to a street within twelve (12) months from the date of issuance of a building permit for a new residence in any Residential District within the city limits, except where unusual conditions exist which eliminate the need for sidewalks and an exception to eliminate all or a portion of the sidewalk construction requirement is recommended by the Planning Commission and approved by the City Council; and, sidewalks shall be constructed along the front property line and, along the side property line where the side property line is

adjacent to a street at the time a new commercial business or industrial building is constructed, except where unusual conditions exist which eliminate the need for sidewalks and an exception to eliminate all or a portion of the sidewalk construction requirement is recommended by the Planning Commission and approved by the City Council. Sidewalk construction shall hereinafter be a requirement of the Building Permit.

Any property owner planning to construct any sidewalk shall do so only as herein provided. It shall be unlawful for any person to construct any sidewalk without first having obtained a permit.

Said owner shall make application in writing for a permit and file such application in the description of the lot, or piece of land along which the sidewalk is to be constructed. The Zoning Enforcement Officer in charge of sidewalks shall issue the desired permit unless good cause shall appear why said permit should be denied. Provided, if it is desired to construct the sidewalk at any other than the regularly prescribed location, grade, or elevation, the Street Superintendent shall determine whether the permit should be granted or denied. All sidewalks shall be built and constructed on the established grade, or elevation, and if there is no established grade, then on the grade or elevation indicated by the Street Superintendent. (*Amended by Ord. Nos. 720, 5/9/90; 780, 9/13/93; 788, 1/12/94; 882, 12/8/99*)

SIDEWALKS; CONSTRUCTION, MATERIALS TO BE USED. All sidewalks, on front of or along any lot, lots or lands abutting upon the same, which shall be hereinafter constructed, reconstructed or replaced, shall be of concrete. No person shall construct, reconstruct or replace any sidewalk of any other

on permission of the Zoning Enforcement Officer. (*Ord. No. 720, 5/9/90; Amended by Ord. No. 882, 12/8/99*)

SIDEWALKS; WIDTH AND DISTANCE FROM LOT LINE. All sidewalks in the sidewalks shall be located at a distance of twelve inches (12") outside the lot line, unless otherwise authorized by the Board of Zoning Adjustment. Whenever possible, they shall correspond in width to sidewalks already built to which they are adjacent or adjoin.

th as established by the Street Superintendent. (*Ord. No. 720, 5/9/90, Amended by Ord. No. 882, 12/8/99; 915, 11/14/01*)

SIDEWALKS; MANNER OF CONSTRUCTION. All concrete sidewalks shall be constructed according to the following specifications:

1. **Sub-base.** The sub-base shall consist of a layer of sand one (1") inch thick, well tamped.
2. **Sub-grade.** All soft or spongy places shall be removed, and all depressions filled with suitable material, which shall be thoroughly compacted by flooding and tamping in layers not exceeding six (6") in thickness.
3. **Proportions of Materials.** The minimum mixture shall consist of a 5½ bag mix of Portland cement. All sidewalks shall be float-finished and/or burlapped for a rough surface.
4. **Slabs.** The slabs shall be four (4') feet square, except in the business district, where the size of the slabs shall be determined by the Street Superintendent.

5. Thickness. The thickness of the slabs for the Residential District shall not be less than four (4") inches and for the Business District not less than five (5") inches.

Sidewalks shall be laid upon a grade of one-fourth (1/4") of an inch to one (1) foot by the Board of Zoning Adjustment. All sidewalks shall conform to the specifications adopted by the City as to the quality of work and materials. The whole work of grading and laying of said sidewalk, whether done by the City, or by the owner of the respective lot, lots, or parcels of land abutting upon the same, shall be under the supervision of the Street Superintendent, and subject to his approval. All sidewalks shall conform to the grade, where established, and on streets where no grade is yet established, then on a grade established by the Street Superintendent with relation to the particular points between which said sidewalk is to be built. The Street Superintendent shall establish grades on streets where the same have not yet been established.

Sidewalks shall be built on a grade or level with the surface of the ground as near as the owner shall rebuild or reconstruct his sidewalk to conform to the grade thus established. It shall be the duty of the Street Superintendent to furnish sidewalk grade. (*Ord. No. 720, 5/9/90; Amended by Ord. No. 882, 12/8/99*)

SIDEWALKS AND DRIVEWAYS; EXPANSION JOINTS. All concrete sidewalks or repaired within the limits of the City, that shall abut on City streets with concrete curbing or pavement shall be constructed with a minimum expansion joint, of approved design and materials, of one (1') inch between sidewalk and concrete curbing, or pavement, and a minimum expansion joint, of approved design and materials, of one (1") inch between driveway and curb or apron, which shall be located a minimum distance of four (4') feet from the edge of pavement or street and a maximum distance of ten (10') feet from the edge of pavement or street, or at the edge of existing sidewalk, where such exists at a lesser distance from the edge of pavement or street. In any area where the sidewalks and/or driveways abut the street, as exits, a one (1") inch expansion joint shall be required. (*Ord. No. 720, 5/9/90; Amended by Ord. No. 882, 12/8/99*)

SIDEWALKS; CURB RAMPS FOR THE HANDICAPPED. Curb ramps for the reconstruction of curbs. Curb ramps shall be made to meet or exceed the requirements of the Board of Public Roads Classifications and Standards.

A lip not to exceed one-half (1/2") inch may be constructed on ramps. The normal gutter line profile shall be maintained through the area of the ramp.

Surface texture on the ramp shall be that obtained by tining, transverse to the slope of the ramp. The tines shall produce grooves approximately one-eighth (1/8") inch wide and three-sixteenths (3/16") deep on one-half (1/2") centers. The flares and wings shall be broomed.

Care shall be taken to assure a uniform grade on the ramp, free of sags and short grade changes.

The slope of sidewalks approaching curb ramps (or their flares) shall be flat enough to provide recovery areas for wheelchairs entering or exiting the ramps.

A minimum clearance of five and one-half (5 1/2') feet shall be provided between an obstruction and the top end of the curb ramp.

Crosswalk marking and signing shall conform to the latest edition of the Manual of Uniform Traffic Control Devices (MUTCD). (*Ord. No. 720, 5/9/90; Amended by Ord. No. 882, 12/8/99*)

SIDEWALKS; CONSTRUCTION NOT IN ACCORDANCE WITH REGULATIONS. In the corporate limits of this City, under notice given or otherwise, shall construct a sidewalk in violation of this Article, the Street Superintendent or Zoning Administrator may stop the work of such construction and order the same to be constructed in accordance with said Article and the work already done to be changed, and on failure of such owner to change any such work, the Street Superintendent or other officer shall forthwith change said work, and the expense of same shall be assessed and taxed to said lot and collected as if taxed, as provided by law. (*Ord. No. 720, 5/9/90; Amended by Ord. No. 882, 12/8/99*)

Article 3.

STREETS; NAMES AND NUMBERS. The Governing Body may at any time, by 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.

STREETS; CROSSINGS. The Governing Body may order and cause to be 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.

STREETS; WIDENING OR OPENING. The Governing Body shall have the power 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.*)

STREETS; EXCAVATION. It shall be unlawful for any person to make an whatsoever unless a written permit is issued by the chief Municipal street official authorizing such excavations.

STREETS; DRIVING STAKES. It shall be unlawful for any person to drive any peg or alley without first procuring the written consent of the Municipal Street official.

STREETS; MIXING CONCRETE. It shall be unlawful for any person to mix any pavement for any reason whatsoever.

STREETS; HARMFUL LIQUIDS. It shall be unlawful for any person to place or line, kerosene, or high lubricating oils, which damage or act as a solvent upon said streets.

STREETS; EAVE AND GUTTER SPOUTS. It is hereby declared unlawful for any 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.

STREETS; HEAVY EQUIPMENT. It shall hereafter be unlawful for any person or

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.)

STREETS; HEAVY LOADS, SPECIAL ROUTES. It shall be unlawful for any 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)

STREETS; PIPE LINES AND WIRES. Poles, wires, gas mains, pipe lines, and all 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.)

STREETS; CONSTRUCTION ASSESSMENT. To defray the costs and expenses of 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 benefitting 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.)

STREETS; AUCTIONS, PARADES, RACES, RALLIES, BLOCK PARTIES AND SUCH OTHER RELATED ACTIVITIES; PERMIT REQUIRED FOR CLOSING. No 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 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*)

STREETS; DRIVEWAY APPROACHES. The Street Superintendent may require

h 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*)

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 in value 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*)

STREETS; VACATING PUBLIC WAYS; PROCEDURE.

Whenever the Governing Body decides that it would be in the best interests of the City to vacate a 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 (1st) 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)

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.

Article 4. Curb and Gutter

CURB AND GUTTER; CUTTING CURB. It shall be unlawful for any person to construct a driveway or any other purpose whatsoever without first having obtained a written permit from the Governing Body therefor. Before any person shall obtain a permit, he shall inform the Municipal Clerk of the place where such cutting is to be done, and it shall be the chief Street Superintendent's duty to inspect the place of entry into the paving, sidewalk, or curb, before the same is cut. When cutting into any paving, it shall be the duty of the party to cut the paving under such rules and regulations as may be prescribed by the Governing Body or the Municipal Engineer. When the applicant is ready to close the opening made, he shall inform the Street Superintendent, who shall supervise and inspect the materials used and the work done in closing the opening. It shall be discretionary with the Governing Body to order the Street Superintendent, under the supervision and inspection of the Municipal Engineer or the committee of the Governing Body on the streets and alleys, to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained such permit. The Governing Body may consent to the work of cutting and closing the paving to be done by the party holding such permit. Before any permit is issued by the Governing Body, the applicant for such permit shall deposit with the Municipal Treasurer a sum set by resolution of the Governing Body for all paving, curb, or sidewalk to be cut. Such sum shall be set on a per square foot cost of construction basis. The deposit shall be retained by the Municipality for the purpose of replacing the paving, curb, or sidewalk, in the event the work is done by the Municipality. In the event the Municipality elects to require the applicant to replace the paving, curb, or sidewalk, the deposit shall be retained by the Municipality until the work is completed to the satisfaction of the Street Superintendent or of the committee of the Governing Body on streets and alleys. In addition to making the deposit above set forth, the applicant shall, before any permit is issued, execute a bond to the Municipality with a good and sufficient surety or sureties to be approved by the Governing Body in a sum set by resolution of the Governing Body. (Ref. 17-567 RS Neb.)

Article 5. Trees

TREES; DEFINITIONS.

STREET TREES. "Street trees" are herein defined as trees, shrubs, bushes and all other plants commonly called parquets, lying between property lines on either side of all streets, avenues, and ways within the City, and the street driving surface.

PARK TREES. "Park trees" are herein defined as trees, shrubs, bushes and all other woody vegetation in public parks and all areas owned by the City, or to which the public has free access as a park.

COMMUNITY FORESTER. "Community Forester" shall be the City employee responsible for the funding and application of Tree City U.S.A.

TREES; STREET TREE SPECIES NOT TO BE PLANTED.

Austrees	Elm Trees	Shrubbery of all types
Black Locust	Fruit Trees	Siberian Elm
Black Walnut	Poplars	Silver Maples
Conifers	Seedless Cottonwoods	Tree of Heaven
Cottonwood		

TREES; PUBLIC TREE CARE. (1) The City shall have the right to plant, maintain, and ensure public safety and to preserve the continuity and aesthetic beauty of such public grounds. Any tree or part thereof which is in an unsafe condition, or which by reason of its nature is injurious to sewers, electric power lines, underground utilities, and other public improvements, or is infected with an injurious fungus, insect or other pest. The City may remove any tree or part thereof which is deemed hazardous to private property or the general public. Any removal shall be in accordance with the provisions of this Article except to the extent of provisions of section 8-506 and Attachment A. The City shall have the responsibility to perform appropriate tree care on their street trees.

TREES; CLEARANCE OVER STREETS AND WALKWAYS. (1) Clearance over the adjacent property owner. A clearance of eight feet (8') will be maintained over the walkways and clearance of fourteen feet (14') will be maintained over streets and alleys.

The City shall have the responsibility to prune any trees in close proximity to utility lines.

TREES; DISTANCES FOR PLANTING.

(1) Street trees may be planted in the parquet where there is more than eight feet (8') between the edge of the sidewalk and the curb of the street. Trees planted

in the parquet shall be equidistant from the sidewalk and the curb. Street or private property trees shall not be planted any closer than five feet (5') from a sidewalk.

(2) No tree shall be planted closer than thirty-five feet (35') from the street corner,

- measured from the point of the nearest intersection of curbs or curb lines.
- (3) Large trees are those that reach mature heights exceeding forty feet (40'). Medium trees have a mature height of twenty-five feet (25') to forty feet (40'), and small (ornamental) trees have a mature height of less than twenty-five feet (25').
 - (4) Large or medium street trees shall not be planted closer than thirty-five feet (35') from another tree.
 - (5) Small (ornamental) trees shall not be planted closer than twenty-five feet (25') from another tree.
 - (6) No tree shall be planted closer than ten feet (10') from a fire hydrant or utility pole.

TREES; TREE TOPPING AND TRIMMING. It shall be unlawful to top any tree. Within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions will be pruned using other acceptable pruning techniques, such as drop crotch pruning or directional pruning.

TREES; TREE REMOVAL AGREEMENT. (1) It shall be unlawful for any person or other valuable consideration, to prune, treat or remove any street or any park trees within the City without first applying for and procuring a permit. There shall be no permit fee. The permit is obtained at the City Office during regular business hours.

(2) Work performed by any public service company or City employee in the pursuit of the public service endeavors shall be exempt from this requirement.

TREES; STUMP REMOVAL. After any street or park tree is removed, the stump surface of the ground and the remaining hole shall be filled with suitable soil.

TREES; ARBORIST QUALIFICATIONS. (1) It shall be unlawful for any person or pruning, treating or removing street or park trees within the City of David City, Nebraska without first filing evidence of passing a certification test given by the Nebraska Arborist Association or a written examination offered by the City Tree Board, and paying a \$25.00 annual license fee based on a calendar year, due January 1.

(2) The City of David City, Nebraska shall maintain a list of qualified arborists, of trees within the City. (*Amended by Ord. No. 816, 1/10/96*)

TREES; ARBORIST BOND OR INSURANCE REQUIREMENTS. (1) It shall be business or occupation or pruning, treating or removing street or park trees within the City of David City, Nebraska without filing evidence of bond or insurance in accordance with requirements set by the City of David City, Nebraska.

(2) Proof of possession of liability insurance in the minimum amounts of five hundred thousand dollars (\$500,000.00) for bodily injury and five hundred thousand dollars (\$500,000.00) property damage, shall be on file with the City Clerk.

(3) Exempt from this requirement are: a) Any pruning and removals under the by public employees doing such work in the pursuit of their public service endeavor.

TREES; PENALTY. (1) It shall be unlawful for any person to prevent the appointed person from carrying out his or her duties, hereunder, or to interfere with the appointed representatives in the lawful performance of his or her duties under the provisions of this Article.

(2) Any persons violating any provision shall be subject to a fine not to exceed one hundred dollars (\$100.00).

Article 6. Penal Provision

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

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

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

Passed and approved this 8th day of June, 2005.

Mayor Stephen Smith

to agenda item #21 - Consideration of going into executive session. Council member Smith seconded the motion. Voting AYE: Council member Lukassen, Kroesing, Schatz, Smith, and Hein. Voting NAY: None. Council member Kirby was absent. The motion carried.

into executive session for four reasons: 1) to consider personnel issues including initiating salary survey adjustments and Cost of Living Adjustments, 2) to consider changes to the employee's manual concerning benefits, 3) legal / law enforcement issues concerning the dog issue, and 4) to begin the initial steps of City Administrator Jeff Fiegenschuh's evaluation and salary. Council member Hein seconded the motion. Voting AYE: Council members Smith, Kroesing, Schatz, Hein, and Lukassen. Voting NAY: None. Council member Kirby was absent. The motion carried. The Council, Mayor Smith, City Administrator Jeff Fiegenschuh, City Attorney Egr, and Police Chief Sunday, went into executive session at 9:08 p.m. Police Chief Sunday and City Attorney Egr left the executive session at approximately 9:40 p.m..

... of executive session at 10:05 p.m. Council member Kroesing seconded the motion. Voting AYE: Council members Smith, Schatz, Lukassen, Kroesing, and Hein. Voting NAY: None. Council member Kirby was absent. The motion carried.

... consideration of an ordinance initiating salary survey adjustments and a cost of living adjustment. Council member Lukassen seconded the motion. Voting YEA: Council members Schatz, Smith, Kroesing, Lukassen, and Hein. Voting NAY: None. Council member Kirby was absent. The motion carried.

... e consideration of changes to the employee's manual concerning benefits. Council member Smith seconded the motion. Voting AYE: Council members Hein, Lukassen, Schatz, Smith, and Kroesing. Voting NAY: None. Council member Kirby was absent. The motion carried.

... he Council, Council member Kroesing made a motion to adjourn. Council member Hein seconded the motion. Voting AYE: Council members Schatz, Smith, Lukassen, Hein, and Kroesing. Voting NAY: None. Council member Kirby was absent. The motion carried and Mayor Smith declared the meeting adjourned at 10:07 p.m..

Mayor Stephen Smith



CERTIFICATION OF MINUTES
June 8, 2005

...erk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of June 8, 2005; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification

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concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Joan E. Kovar