

CITY COUNCIL PROCEEDINGS

September 14, 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 September 8, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor and Council members conveyed the availability of the Agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Stephen Smith, Council members Gary Smith, Ted Lukassen, Nick Hein, Bill Schatz, Gary Kroesing, and Mark Kirby, City Administrator Jeff Fiegenschuh, City Attorney Jim Egr, Police Chief Stephen Sunday, Electric Supervisor Tim Kovar, Water/Sewer Supervisor Jim Kruse, Street Superintendent Jim McDonald, Richard & Virginia Rerucha, David Scribner, George Cunningham, Banner Press Editor Larry Peirce, and City Clerk-Treasurer Joan E. Kovar. Youth council member Nolan Moravec was absent and Audra Duren is no longer a youth council member.

The meeting opened with the Pledge of Allegiance.

The minutes of the August 10, August 15th, and August 16th, 2005 meetings of the Mayor and City Council were approved upon a motion by Council member Kirby and seconded by Council member Smith. Voting YEA: Council members Schatz, Kroesing, Lukassen, Hein, Smith, and Kirby. 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 no petitions.

The following letter was acknowledged:

To: Joan Kovar, City Clerk-Treasurer

9/11/05

With reference to the new street construction on K Street between 8th & 9th Streets:

It appears the tarring of the cuts in the concrete is not holding. Would this company come and clean up the mess they have now on the street and refill the cuts with new tar, please? This company left a lot of the old asphalt in the dirt they used to fill in next to the curb and we picked up many a five gallon bucket full. Does the company have a warranty on the work and materials they used, if so how long? Will the alley approach be paved or rocked in the future?

Gene & Gwen Kliment

Street Superintendent Jim McDonald will contact Gene & Gwen Kliment and answer their questions and address their concerns.

Council member Kroesing expressed concern over the bird droppings on the sidewalk in front of the David City Health Mart at 422 No. 5th Street and the old city office building at 402 5th Street. The Street department was instructed to wash the sidewalk off as needed.

Mayor Smith asked for consideration of claims. Council member Kirby made a motion to authorize the payment of claims. Council member Kroesing seconded the motion. Voting YEA:

Council members Hein, Schatz, Lukassen, Smith, Kroesing, and Kirby. 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.

City Administrator Fiegenschuh reported that City Clerk Joan Kovar and Water/Sewer Operator Scott Steager are enrolled in the LeadershipPlenty II Class. LeadershipPlenty is sponsored by the David City Area Chamber of Commerce and the University of Nebraska Rural Initiative. It is a copyrighted program developed by the Pew Partnership for Civic Change. Topics include: Finding leaders within, identifying community assets, managing groups for results, making meetings work, managing conflict, building strategic partnerships, moving from talk to action, valuing evaluation, and communicating for change.

Police Chief Sunday reported that the police department purchased "Slow Down" signs that are showing up in various locations around town. Sunday stated that if anyone is interested in a sign they simply need to contact the police department.

Street Superintendent McDonald reported that he has been using vacation time and therefore did not get his report in the agenda packet. McDonald stated the pool has been drained, and the street department has been busy recycling, bailing cardboard and plastic, and patching holes.

Mayor Smith stated that City Administrator Fiegenschuh will be in Minnesota for the ICMA conference from September 26th - 28th. It was decided not to schedule a Committee of the Whole meeting for September.

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

Council member Kroesing made a motion to advance to agenda item #13 - Consideration of an ordinance amending Highway Commercial District - Section 414.4 to permit mini storage and RV storage as a conditional/special use. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

A Public Hearing was held on August 10, 2005 to consider the request to amend Highway Commercial District - Section 414.4 - to permit Mini Storage and RV Storage as a conditional/special use. The Council tabled consideration to the September 14th meeting. David Scribner, who owns the North 130' of Block 8, Miles 6th Addition, located along 5th Street just north of Marquis Body Shop, 495 So. 5th Street, would like to erect mini storage and RV storage units which are not currently allowed in Highway Commercial zoned areas. Therefore, he is requesting that Highway Commercial Section 414.4 be amended to permit mini storage and RV storage as a conditional/special use.

Virginia Rerucha is opposed to allowing mini storage and RV storage as a conditional/special use in Highway Commercial as they are allowed in Industrial zoned areas and she feels that is where they belong.

Council member Kroesing introduced an Ordinance amending Highway Commercial District - Section 414.4 Special Exceptions - by the addition of the following: 10. Mini Storage and RV Storage. Council member Lukassen made a motion to suspend the statutory rule that requires

an Ordinance be read on three separate days. Council member Kroesing seconded the motion. Voting YEA: Council members Hein, Kirby, Kroesing, and Lukassen. Voting NAY: Council members Smith and Schatz. Council member Schatz stated that he doesn't think now is the time to take the unanimous decision of the Planning Commission and reverse that. The motion failed as a 3/4 vote of the council - 5 - is required to suspend the statutory rule.

Council member Kroesing made a motion to pass the Ordinance on first reading only. Council member Hein seconded the motion. Voting YEA: Council members Lukassen, Hein, and Kroesing. Voting NAY: Council members Smith, Kirby, and Schatz. The result being a tie, Mayor Smith broke the tie and voted "No", stating that he had nothing against Dave Scribner, he thinks the storage units are a marvelous idea, but the Planning Commission unanimously voted against allowing mini storage and RV storage in Highway Commercial. The motion failed.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, TO AMEND ZONING ORDINANCE NO. 616, SECTION 414 - HIGHWAY COMMERCIAL DISTRICT TO INCLUDE "**MINI STORAGE AND RV STORAGE**" IN SECTION 414.4 - **SPECIAL EXCEPTIONS**, TO REPEAL ALL ORDINANCES IN CONFLICT WITH THIS PROVISION, DESCRIBE THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT, AND PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. That Ordinance No. 616, Highway Commercial District - Section 414.4 Special Exceptions - be amended by the addition of the following:

10. Mini Storage and RV Storage;

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

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

Passed and approved this _____ day of _____, 2005.

Failed
Mayor Stephen Smith

Failed
City Clerk Joan E. Kovar

Mayor Smith opened the Public Hearing at 7:36 p.m. concerning the Department of Economic Development Community Development Block Grant Project 04-PW-019 to consider the close-out of the CDBG Street Project. City Administrator Jeff Fiegenschuh reported that they are working on the final punch list. Street Superintendent McDonald thanked Jeff for getting the grant that enabled the City to get this project done. There being no further discussion, Mayor

Smith declared the Public Hearing closed at 7:40 p.m..

Mayor Smith opened the Public Hearing at 7:41 p.m. with the City Council sitting as a Board of Equalization for the purpose of hearing objections to and for equalizing assessments proposed in Street Improvement District Nos. 1-2005, 2-2005, and 3-2005. City Clerk Joan Kovar reported that State Statute #17-524 states "notice of the meeting shall be published in some newspaper published or of general circulation in said city at least four weeks before the same shall be held or, in lieu thereof, personal service may be had upon persons owning or occupying property to be assessed". City Clerk Kovar stated that the notice was published in the Banner Press on August 11, 2005 and she also mailed letters to all persons owning property to be assessed. There being no further discussion, Mayor Smith declared the Public Hearing closed at 7:46 p.m..

Council member Hein introduced Resolution No. 13 -2005 and moved for its passage and adoption. Council member Lukassen seconded the motion. Voting YEA: Council members Kirby, Schatz, Smith, Kroesing, Lukassen, and Hein. Voting NAY: None. The motion carried and Resolution No. 13 - 2005 was passed and adopted as follows:

RESOLUTION NO. 13 - 2005

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

Section 1. The Mayor and City Council have heretofore designated the time and place for considering and levying assessments upon the property specially benefitted by the improvements in Street Improvement District No. 1 - 2005; Street Improvement District No. 2 - 2005; and Street Improvement District No. 3 - 2005; that the notice of the time of holding such meeting and the purpose for which it is to be held was published at least four weeks before the same, on August 11, 2005, and notice was also mailed to persons owning or occupying property to be assessed; the Mayor and members of the City Council have each personally inspected said improvements and real estate on and adjacent thereto; the Mayor and Council have, at this session, heard all persons who desire to be heard in reference to the valuation of each lot to be assessed and the special benefits or damages thereto and have considered the advice of the engineers in charge of the construction and improvements.

Section 2. The Mayor and City Council further find and determine that Street Superintendent Jim McDonald quoted a price of \$5.00 per running foot for the costs of street improvements in Street Improvement District No. 1 - 2005; Street Improvement District No. 2 - 2005; and Street Improvement District No. 3 - 2005.

The Mayor and Council further find and determine that no lot or parcel of land in said district has been damaged by the construction of said improvements, and that the amount of benefits specially accruing to each lot and parcel of land in said district by reason of the construction of said improvements at least equals the amount to be assessed against each lot or parcel of the land to pay the cost of said improvements.

Section 3. There is hereby levied and assessed upon the several lots and parcels of land in said districts, special assessments to pay the cost of constructing said improvement in the amount in dollars and cents set out as follows which are made a part hereto:

STREET IMPROVEMENT DISTRICT NO. 1 - 2005

K Street between 8th and 9th Streets

PARCEL DESCRIPTION ASSESSMENT	OWNER	AMOUNT
Lots 10 & 11, Block 3, Will Thorpe and Perkins 1st Addition to the City of David City, Butler County, Nebraska; 100 x 140'	Gwendolyn M. Kliment.....	\$700.00
Lots 9 & 12, Block 3, Will Thorpe and Perkins 1 st Addition to the City of David City, Butler County, Nebraska; 100' x 140'	David & Angela McMahon.....	\$700.00
Lot 2, Block 10, Will Thorpe & Perkins 1 st Addition to the City of David City, Butler County, Nebraska; 50' x 140'	Barbara A. Vogl.....	\$700.00
Lot 1 and No. 1/2 of Lot 4, Block 10, Will Thorpe & Perkins 1 st Addition to the City of David City, Butler County, NE; 75' x 140'	William & Donna Anel	\$700.00
K Street between 8th and 9th Streets:		\$2,800.00

* * * * *

STREET IMPROVEMENT DISTRICT NO. 2 - 2005

So. 10th Street between "A" and Nebraska Streets

Lots 2 & 3, Block 1, Miles 5 th Addition to the City of David City, Butler County, Nebraska; 150' x 200'	William S. Magargal and Marie S. Spodek.....	\$1,000.00
West 1/2 of Lot 6, Block 1, Miles 5 th Add to the City of David City, Butler County, Nebraska; 75' x 100'	Anton & Betty J. Dolezal.....	\$500.00
Lot 1 & N 1/2 of Lot 4, Block 2, Miles 5 th Addition to the City of David City, Butler County, Nebraska; 150' x 150'	Gary D. & Deborah A. Schmid	\$750.00
S 1/2 of Lot 4 & N 25' of Lot 5, Block 2, Miles 5 th Addition to the City of David City, Butler County, Nebraska; 75' x 140'	George Anel, estate	\$375.00

levied from the date of passage of this resolution and shall be certified by the City Clerk-Treasurer, to the County Treasurer of this City for collection; the City Clerk-Treasurer shall also at the time provided by law, cause such assessments or the portion thereof then remaining unpaid, to be certified to the County Clerk of the county for entry upon the property tax list; the first said assessments shall be payable to the City Clerk-Treasurer; all ensuing assessments shall be payable to the County Treasurer.

Section 6. Said special assessments above provided for shall become due in sixty (60) days after the statement date of the assessment and may be paid within that time without interest, but if not paid, to bear interest thereafter at the rate of eight per cent (8%) per annum for the improvements in the said district until delinquent; such assessments shall become delinquent in ten equal annual installments with the first falling due 60 days from the statement date and subsequent installments falling due in each year thereafter on the 30th day of January until paid in full. Delinquent installments shall bear interest at the rate of fourteen per cent (14%) per annum until paid and shall be collected in the usual manner for the collection of taxes.

BE IT FURTHER RESOLVED that a certified copy of said assessment schedule be filed by the City Clerk-Treasurer with the County Clerk of Butler County, Nebraska, as provided by law.

Passed and adopted this _____ day of _____, 2005.

Mayor Stephen Smith

City Clerk-Treasurer Joan E. Kovar

Mayor Smith declared the Public Hearing open at 7:47 p.m. to consider the Budget Hearing and Budget Summary and Special Hearing to set the Final Tax Request. The proposed budgets were previously discussed on August 15th and 16th. There being no discussion, Mayor Smith declared the Public Hearing closed at 7:49 p.m..

City of David City
in
Butler County, Nebraska

NOTICE OF BUDGET HEARING AND BUDGET SUMMARY

PUBLIC NOTICE is hereby given, in compliance with the provisions of State Statute Sections 13-501 to 13-513, that the governing body will meet on the 14th day of September, 2005 at 7:45 p.m., at the City Office, 557 4th Street, David City, Nebraska, for the purpose of hearing support, opposition, criticism, suggestions or observations of taxpayers relating to the following proposed budget. The budget detail is available at the office of the Clerk during regular business hours.

Joan E. Kovar

City Clerk

2003-2004 Actual Disbursements & Transfers	\$ <u>5,556,249.00</u>
2004-2005 Actual/Estimated Disbursements & Transfers	\$ <u>7,448,471.00</u>
2005-2006 Proposed Budget of Disbursements & Transfers	\$ <u>6,166,041.34</u>
2005-2006 Necessary Cash Reserve	\$ <u>2,529,398.64</u>
2005-2006 Total Resources Available	\$ <u>8,695,439.98</u>
Total 2005-2006 Personal & Real Property Tax Requirement	\$ <u>466,723.13</u>
Unused Budget Authority Created for Next Year	\$ <u>568,733.88</u>

Breakdown of Property Tax:

Personal and Real Property Tax Required for Bonds	\$ <u>9,152.34</u>
Personal and Real Property Tax Required for All Other Purposes	\$ <u>457,570.79</u>

NOTICE OF SPECIAL HEARING TO SET FINAL TAX REQUEST

PUBLIC NOTICE is hereby given, in compliance with the provisions of State Statute Section 77-1601.02, that the governing body will meet on the 14th day of September, 2005 at 7:45 p.m. at the City Office, 557 No. 4th Street, David City, NE, for the purpose of hearing support, opposition, criticism, suggestions or observations of taxpayers relating to setting the final tax request at a different amount than the prior year tax request.

2004-2005 Property Tax Request	\$ <u>455,135.34</u>
2004 Tax Rate	<u>0.500000</u>
Property Tax Rate (2004-2005 Request/2005 Valuation)	<u>0.004972</u>
2005-2006 Proposed Property Tax Request	\$ <u>466,723.13</u>
Proposed 2005 Tax Rate	<u>0.510000</u>

Council member Smith introduced Resolution No. 14-2005 and moved for its passage and adoption. Council member Hein seconded the motion. Voting YEA: Council members Schatz, Lukassen, Kroesing, Kirby, Hein, and Smith. Voting NAY: None. The motion carried and Resolution No. 14-2005 was passed and adopted as follows:

RESOLUTION NO. 14-2005

WHEREAS, Nebraska Revised Statute 77-1601.02 provides that the property tax request for the prior year shall be the property tax request for the current year for purposes of the levy set by the County Board of Equalization unless the Governing Body of the City of David City passes by a majority vote a resolution or ordinance setting the tax request at a different amount; and

WHEREAS, a special public hearing was held as requested by law to hear and consider comments concerning the property tax request; and

WHEREAS, it is in the best interest of the City of David City that the property tax request for the current year be a different amount than the property tax request for the prior year.

NOW, THEREFORE, the Governing Body of the City of David City, by a majority vote, resolves that:

1. The 2005-2006 property tax request be set at \$ 466,723.13 (.51 tax rate) .
2. A copy of this resolution be certified and forwarded to the County Clerk on or before September 20, 2005.

Dated this 14th day of September , 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Hein made a motion to approve an additional 1% increase in restricted funds authority. Council member Lukassen seconded the motion. Voting YEA: Council members Schatz, Kroesing, Kirby, Smith, Lukassen, and Hein. Voting NAY: None. The motion carried.

City Administrator Fiegenschuh reported that the Housing Committee met and approved an application based on the David City Housing Grant Income Calculation Work Sheet. The applicant (R.W.) meets all HUD and DED LMI (low to moderate income) requirements. Council member Lukassen made a motion to approve awarding CDBG Housing Funds to a new applicant in the amount of \$3,450.00. Council member Kroesing seconded the motion. Voting YEA: Council members Hein, Kirby, Smith, Schatz, Kroesing, and Lukassen. Voting NAY: None. The motion carried.

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 YEA: Council members Smith, Schatz, Hein, Lukassen, Kirby, and Kroesing. Voting NAY: None. The motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1008 on the third and final reading. Council member Kirby seconded the motion. Voting YEA: Council members Hein, Schatz, Smith, Lukassen, Kirby, and Kroesing. Voting NAY: None. The motion carried and Ordinance No. 1008 was passed on third and final reading as follows:

ORDINANCE NO. 1008

AN ORDINANCE CREATING SANITARY SEWER EXTENSION DISTRICT NO. 2005-1 OF THE CITY OF DAVID CITY, NEBRASKA; DESCRIBING THE PROPERTY CONTAINED WITHIN THE DISTRICT; DESIGNATING THE SIZE, LOCATION AND TERMINAL POINTS OF SANITARY SEWER MAINS AND SANITARY SEWER LINES AND RELATED IMPROVEMENTS WITHIN SAID DISTRICT; REFERRING TO PLANS AND SPECIFICATIONS AND COST ESTIMATES AS PREPARED BY THE ENGINEER IN CONNECTION THEREWITH AND ON FILE WITH THE CITY CLERK, AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. The Mayor and Council of the City of David City, Nebraska, hereby find and determine that it is necessary and advisable to extend the municipal sanitary sewer system beyond the existing system by the construction of sanitary sewer mains and sanitary sewer lines and appurtenant improvements and that for the purpose of constructing said sanitary sewer mains and related improvements, there is hereby created Sanitary Sewer Extension District No. 2005-1 of the City of David City, pursuant to authority granted in Section 19-2402, R.R.S. Neb. 1997.

Section 2. The property contained within Sanitary Sewer Extension District No. 2005-1 shall consist of a tract of land located in Butler County, Nebraska, being described as follows:

A tract of land consisting of Lots 11 through 20, both inclusive, in Sabata's 2nd Addition to the City of David City, all located in the North ½ of the Northeast ¼ of Section 20, Township 15 North, Range 3 East of the 3rd P.M., in Butler County, Nebraska.

The size, location and terminal points of the sanitary sewer mains, sanitary sewer lines and other appurtenances in said District shall consist of the following:

Installation and construction of sanitary sewer line consisting of an 8 inch PVC sanitary sewer line commencing at the intersection of 11th & N Streets on the west side of 11th Street and with a terminal point at approximately 150 feet East of the intersection of 11th & O Streets on the South side of the street together with the installation of three man holes, and other necessary related sanitary sewer improvements and appurtenances all as set out in the plans and specifications of the City's Engineers.

Section 3. Reference is hereby made to the plans and specifications for said sanitary sewer extensions, which have been prepared by Gilmore & Associates, special engineers for the City, and which, together with said engineers' estimate of the total cost for the proposed sanitary sewer extensions, have heretofore been filed with the City Clerk.

Section 4. The engineers' estimate of total cost for the proposed sanitary sewer extension improvements in said District No. 2005-1 is \$ 14,500.00 .

Section 5. The Mayor and Council hereby find and determine that none of the properties located within said District are presently served by the City's existing system of sanitary sewer service and that said District constitutes an area of land located apart and outside the area served and benefitted by said system and all of the property in said District is located

within the City of David City, Nebraska or within one mile of the corporate limits of the City of David City, Nebraska.

Passed and approved this 14th day of September, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

[SEAL]

Council member Kirby made a motion to pass and adopt Resolution No. 15 - 2005 waiving the interest on the lien on the Pat Prothman property located at 320 No. 10th Street. Council member Kroesing seconded the motion. Voting YEA: Council members Smith, Hein, Lukassen, Schatz, Kroesing, and Kirby. Voting NAY: None. The motion carried.

RESOLUTION NO. 15 - 2005

WHEREAS, the City of David City has a lien on the "Hlavac" property caused by clean up of the property owned by William Hlavac; and,

WHEREAS, the "Hlavac" property was sold at auction but did not bring enough to pay the lien and other costs; and,

WHEREAS, Pat Prothman purchased the "Hlavac" property.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the City of David City, Nebraska, hereby releases the "interest" due by reason of its lien on the "Hlavac" property and hereby confirms to the Butler County Treasurer that the "interest" on said lien should be discharged and cleared for the Treasurer's records and be considered satisfied.

Dated this 14th day of September, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Kroesing made a motion to waive the "lien" of \$497.42 on the Pat Prothman property located at 320 No. 10th Street. Council member Kirby seconded the motion. Voting YEA: Council members Kirby and Kroesing. Voting NAY: Council members Smith, Hein, Lukassen, and Schatz. The motion failed.

Mayor Smith declared a recess at 8:08 p.m. The meeting resumed at 8:22 p.m.

Mayor Smith declared the Public Hearing open at 8:25 p.m. regarding the Sherry Benson property located at 915 No. 11th Street. There are several liens against the property, to-wit; City of David City, U.S. Bank, and Wachovia-Coll Agt for back property tax. City Attorney Egr reported that he checked with U.S. Bank, and as of August 11, 2005, Sherry Benson is current

with her house loan payment. Egr suggested passing the following resolution and then notifying Sherry Benson, U.S. Bank - who holds the house loan, and Wachovia-Coll Agt./SASS Muni IV DTR - who paid the back taxes, that the City plans to have the fire department burn the house down, or have the house bulldozed down. There being no further discussion, Mayor Smith declared the Public Hearing closed at 8:31 p.m..

Council member Kirby introduced Resolution No. 16 - 2005 regarding the Sherry Benson property located at 915 No. 11th Street and moved for its passage and adoption. Council member Kroesing seconded the motion. Voting YEA: Council members Schatz, Smith, Hein, Lukassen, Kroesing, and Kirby. Voting NAY: None. The motion carried and Resolution No. 16 - 2005 was passed and adopted as follows:

RESOLUTION NO. 16 - 2005

WHEREAS, the City of David City has authority by Municipal Code Section No. 4-401 to establish definitions of what constitutes a public nuisance. Specifically, the maintaining, using, placing, depositing, leaving, or permitting any of the specific acts, omissions, places, conditions, and things as set out in the twelve sections of said municipal code.

WHEREAS, the City of David City, as established in code #4-402, has the authority to abate all nuisances as defined in code #4-401.

WHEREAS, the David City Board of Health at a public meeting held on May 4, 2005, declared the property located at 915 No. 11th Street, David City, Butler County, Nebraska, to be in violation of Municipal Code Section No. 4-401 (8), and a public nuisance.

WHEREAS, at the August 3, 2005 City Council meeting, the Governing Body affirmed the findings of the Board of Health, and further ordered that notice be given to the owner, occupant, lessee, or mortgagee of said property, of the violations.

WHEREAS, the City of David City, held a public hearing at a regularly scheduled City Council meeting on September 14, 2005, regarding the property located at 915 No. 11th Street, David City, Butler County, Nebraska.

WHEREAS, the City of David City, having followed the rules and procedures as set out in code #4-402, and having held a public hearing on September 14, 2005, does hereby declare said property, owned by Sherry Benson-Ramirez, to be a public nuisance.

WHEREAS, the Governing Body (City Council) having declared said property to be a public nuisance, by this Resolution, orders and directs the owner, occupant, lessee, or mortgagee to remedy the said public nuisance at once. The owner, occupant, lessee, or mortgagee may appeal such decision to the District Court of Butler County, Nebraska.

WHEREAS, the City of David City, by this Resolution, shall proceed to abate the nuisance if the owner, occupant, lessee or mortgagee fails to remedy said public nuisance at once. Upon the completion of the work by the Municipality, a statement of the costs of such work shall be transmitted to the Governing Body (City Council), which is authorized to bill the property owner, occupant, lessee or mortgagee.

THEREFORE, BE IT RESOLVED THAT, the City of David City has declared the property

located at 915 No. 11th Street, David City, Butler County, Nebraska, to be a public nuisance, and further more directs that the Municipality begin cleaning up said property on, or after, September 15, 2005, unless a notice of appeal is made with the District Court of Butler County, Nebraska.

DATED, this 14th day of September, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

The Rural Enterprise Assistance Project (REAP) of the Center for Rural Affairs is committed to strengthening rural communities through small, self-employed business development. The Center for Rural Affairs is the parent organization of the REAP Program and the REAP Women's Business Center. Established in 1973, the Center for Rural Affairs is a private, non-profit organization working to strengthen small businesses, family farms and ranches, and rural communities. A business plan gives leaders and financial bankers a full picture of the business, the plan helps anticipate capital and equipment requirements, it gives the business a "road map" for a future direction, and a plan helps measure progress and anticipate problem areas.

Council member Kroesing introduced Resolution No. 17 - 2005 supporting the provision of services by the Rural Enterprise Assistance Project (REAP) in the City and surrounding area. Council member Hein seconded the motion. Voting YEA: Council members Schatz, Smith, Lukassen, Kirby, Hein, and Kroesing. Voting NAY: None. The motion carried and Resolution No. 17 - 2005 was passed and adopted as follows:

RESOLUTION NO. 17 - 2005

WHEREAS, the City of David City, Nebraska in Butler County is an eligible unit of general government authorized to participate in Community Development Block Grant (CDBG) Programs through the State of Nebraska Department of Economic Development; and,

WHEREAS, our community and surrounding area has a strong need for business development services and we agree that our community is part of a REAP-CDBG service area in Nebraska; and,

WHEREAS, our community would like the service of REAP to be available for start-up and existing entrepreneurs, as needed; and,

WHEREAS, the work of the REAP Program is consistent with local and area-wide

strategic planning plans for community and economic development and will be coordinated with other economic development activities in the project area; and,

WHEREAS, working together will create more opportunities for entrepreneurs and will further enhance the overall effectiveness of all program partners;

NOW THEREFORE, BE IT RESOLVED, that the City of David City, Nebraska supports the provision of services by the Rural Enterprise Assistance Project (REAP) in the City and surrounding area.

Passed and approved by the City Council of David City, Nebraska, this 14th day of September, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Kirby made a motion to approve the Interlocal Agreement with David City Public Schools concerning updates at the City Auditorium. Council member Kroesing seconded the motion. Voting YEA: Council members Lukassen, Schatz, Hein, Smith, Kroesing, and Kirby. Voting NAY: None. The motion carried.

INTERLOCAL AGREEMENT

This Interlocal Agreement, hereafter referenced as "Agreement", is made and entered into between the **CITY OF DAVID CITY, NEBRASKA**, a Nebraska Municipal Corporation hereafter referenced as "City" and **DAVID CITY SCHOOL DISTRICT NO. 56**, a Nebraska Public School District, hereafter referenced as "District".

WHEREAS, the City owns and operates an Auditorium and Park facility known as the David City Municipal Auditorium, hereafter referenced as "Auditorium", which contains locker room facilities, basketball/volleyball court, track facilities, football facilities, practice field facilities, and hall and kitchen facilities; and,

WHEREAS, the District has rented from the City the Auditorium on a per day and per event basis over the years; and,

WHEREAS, the City desires to perform certain improvements to the Auditorium, which

will make it more energy efficient and user friendly; and,

WHEREAS, L.B. 217 passed in 2005 by the Nebraska Unicameral created the Public Facilities Construction and Finance Act with amendments to the Nebraska Interlocal Cooperation Act, which allows public entities to join together in certain public facilities projects; and,

WHEREAS, the City will be incurring bonded indebtedness for its Auditorium improvement project, which the District WILL NOT BE RESPONSIBLE OR HAVE ANY LIABILITY; and,

WHEREAS, the City's Auditorium project can be assisted by the District paying in advance certain of its rental payments for use of the Auditorium; and,

WHEREAS, the District desires to participate in the Auditorium renovation project by "fronting" a fixed amount of rental payments.

NOW, THEREFORE, IN CONSIDERATION OF THE TERMS AND CONDITIONS CONTAINED HEREIN, WHICH THE PARTIES AGREE TO BE VALUABLE CONSIDERATION, THE CITY AND DISTRICT AGREE AS FOLLOWS, TO-WIT:

- (1) The District will pay the sum of TWELVE THOUSAND DOLLARS (\$12,000.00) to the City on or before November 1, 2005. The said sum will be "fronting" of the District's Auditorium rent.
- (2) The City agrees that the aforesaid stated sum will be credited to the District's rental of the Auditorium by the City for a period NOT TO EXCEED FORTY-EIGHT (48) MONTHS beginning September 1, 2005. The rental will be as adjusted by the City in its normal course of rental adjustments for all uses of the Auditorium.
- (3) The City will deduct from the aforesaid sum the normal rental customarily charged the District by the City for the use of the Auditorium, BUT THERE SHALL NOT BE DEDUCTED THE SO-CALLED "CLEAN-UP FEE", WHICH THE DISTRICT DOES AGREE TO PAY AS NORMALLY DONE IN THE PAST BY THE DISTRICT.
- (4) The District agrees, that should the District's rental of the Auditorium reach the total sum of TWELVE THOUSAND DOLLARS (\$12,000.00) stated aforesaid BEFORE the expiration of the aforesaid FORTY-EIGHT (48) MONTHS, the District WILL pay the rental normally charged thereafter. The intention of the parties is that above normal use of the Auditorium by the District as done in the past within the aforesaid FORTY-EIGHT (48) MONTHS WILL NOT result in the District having free rental of the Auditorium for the balance of the aforesaid FORTY-EIGHT (48) MONTHS term.
- (5) The District agrees, however, that should the District NOT use up TWELVE THOUSAND DOLLARS (\$12,000.00) of rental of the Auditorium during the aforesaid FORTY-EIGHT (48) MONTHS term, this Agreement will terminate after the aforesaid time period and normal rental will resume as the rates are periodically adjusted by the City WITHOUT consideration for any further credit

The foregoing instrument was acknowledged before me on September 14, 2005 by Stephen Smith, Mayor, and Joan E. Kovar, City Clerk, of the City of David City, Nebraska, a Nebraska Municipal Corporation, on behalf of the City.

Notary Public

State of Nebraska)
) ss.
County of Butler)

The foregoing instrument was acknowledged before me on _____, 2005 by _____, President of the School Board, and _____, Superintendent of Schools of the DAVID CITY SCHOOL DISTRICT NO. 56, a Nebraska Public School District.

Notary Public

Council member Kirby made a motion to authorize Philip A. Lorenzen of Kirkpatrick, Pettis to draft an ordinance for consideration issuing bonds in the amount of \$40,000 for updates at the City Auditorium. Council member Kroesing seconded the motion. Voting YEA: Council members Hein, Smith, Lukassen, Schatz, Kroesing, and Kirby. Voting NAY: None. The motion carried.

Ordinance No. 1006 was passed on 1st reading on July 13, 2005. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Lukassen seconded the motion. Voting YEA: Council members Smith, Schatz, Hein, Kirby, Lukassen, and Kroesing. Voting NAY: None. The motion carried.

Council member Kirby made a motion to pass Ordinance No. 1006, amending Chapter 9: Zoning/Building Regulations of the David City Municipal Code Book, on the third and final reading. Council member Smith seconded the motion. Voting YEA: Council members Schatz, Lukassen, Hein, Kroesing, Smith, and Kirby. Voting NAY: None. The motion carried.

ORDINANCE NO. 1006

AN ORDINANCE AMENDING CHAPTER 9: ZONING / BUILDING REGULATIONS OF THE DAVID CITY MUNICIPAL CODE BOOK; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. Chapter 9: Zoning/Building Regulations of the David City Municipal Code
Book be amended to read as follows:

Chapter 9

ZONING / BUILDING REGULATIONS

Article 1. Zoning / Building Permits

- §9-201** **ZONING / BUILDING PERMIT; LIMITATION.** If the work described in any Zoning Permit has not begun within six (6) months from the date of issuance thereof, said permit shall expire; it shall be cancelled by the Zoning Administrator; and written notice thereof shall be given to the persons affected.
- If the work described in any Zoning / Building Permit has not been substantially completed within two (2) years of the issuance thereof, said Permit shall expire and be cancelled by the Zoning Administrator, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled Permit shall not proceed unless, and until, a new Zoning Permit has been obtained.
- §9-202** **ZONING / BUILDING PERMITS.** Any person desiring to commence or proceed to erect, construct, repair, enlarge, demolish, or relocate any building or dwelling, or cause the same to be done, shall file with the Municipal Clerk an application for a zoning / building permit. The application shall be in writing on a form to be furnished by the Municipal Clerk for that purpose. Every such application shall set forth the legal description of the land upon which the construction or relocation is to take place, the current zoning, the nature of the use or occupancy, the principal dimensions, the estimated cost, the names of the owner, architect, and contractor, and such other information as may be requested thereon. Payment of the permit fee set by resolution of the Governing Body is due at the time the application is filed. The application, plans, and specifications so filed with the Municipal Clerk shall be checked and examined by the Zoning Administrator. If the application, plans, and specifications are found to be in conformity with the requirements of this Chapter and all other ordinances applicable thereto, the Zoning Administrator shall authorize the Municipal Clerk to issue the said applicant a permit. Whenever there is a discrepancy between permit application procedures contained herein and those contained in any building code adopted by reference, the provisions contained herein shall govern. (*Ref. 17-130 thru 17-132, 17-550, 17-1001 RS Neb.*)
- §9-203** **BUILDING MOVING; REGULATIONS.** It shall be unlawful for any person, firm, or corporation to move any building or structure within the Municipality without a written permit to do so. Application may be made to the Municipal Clerk, and shall include the present and future location of the building to be moved, the proposed route, the equipment to be used, and such other information as the Governing Body may require. The application shall be accompanied by a certificate issued by the County Treasurer to the effect that all the provisions regulating the moving of buildings have been complied with on the part of the owner of the real estate upon which the said

building is presently located. The Municipal Clerk shall refer the said application to the Municipal Police for approval of the proposed route over which the building is to be moved. Upon approval of each municipal department head listed on the building moving permit, and upon approval of the Zoning Administrator, the Municipal Clerk shall then issue the said permit; provided, that a good and sufficient corporate surety bond, check, or cash in the amount set by motion of the Governing Body and conditioned upon moving said building without doing damage to any private or Municipal property is filed with the Municipal Clerk prior to the granting of any permit. All buildings wider than ten feet (10'), or longer than twenty feet (20'), or, when in a position to move, higher than fifteen feet (15'), or of any other size which shall require displacement of any City property, shall require a building moving permit and a building moving fee in the amount set by motion of the Governing Body. All other buildings or structures shall require only a building moving permit. In the event it will be necessary for any licensed building mover to interfere with the telephone or telegraph poles and wires, or a gas line, the company or companies owning, using, or operating the said poles, wires or line shall upon proper notice of at least twenty-four (24) hours, be present and assist by disconnecting the said poles, wires, or line relative to the building moving operation. All expense of the said disconnection, removal, or related work shall be paid in advance by the licensee unless such disconnection or work is furnished on different terms as provided in the said company's franchise. Whenever the moving of any building necessitates interference with a water main, sewer main, pipes, or wire belonging to the Municipality, notice in writing of the time and route of the said building moving operation shall be given to the various Municipal officials in charge of the Municipal utility departments who shall proceed in behalf of the Municipality and at the expense of the mover to make such disconnections and do such work as necessary. (Ref. 60-6,288 to 60-6,294, 60-6,296)

§9-204 BUILDING MOVING; DEPOSIT. At such time as the building moving has been completed, each municipal department head listed on the building moving permit shall inspect the premises and report to the Municipal Clerk as to the extent of damages, if any, resulting from the said relocation and whether any Municipal laws have been violated during the said operation. Upon a satisfactory report from each municipal department head listed on the building moving permit, the Municipal Clerk shall return the corporate surety bond, cash, or check deposited by the applicant. In the event the basement, foundation, or portion thereof is not properly filled, covered, or in a clean and sanitary condition, the Governing Body may apply the money deposited for the purpose of defraying the expense of correcting the said conditions. If the expense of correcting the hazardous condition is greater than the amount of the deposit set by motion of the Governing Body, as required herein, the Governing Body may recover such excess expense by civil suit or otherwise as prescribed by law.

Article 3. Building Code

§9-301 BUILDING CODE; ADOPTED BY REFERENCE. To provide certain minimum standards, provisions, and requirements for safe and stable design, methods of construction, and uses of materials in buildings hereafter erected, constructed, enlarged, altered, repaired, relocated, and converted, the Uniform Building Code the most recent edition, recommended by the International Conference of Building Officials, and printed in book or pamphlet form is hereby incorporated by reference in

addition to all amended editions as though printed in full herein insofar as said code does not conflict with the Statutes of the State of Nebraska.

One (1) copy of the Building Code is on file at the office of the Municipal Clerk and is available for public inspection at the city office during their regular business hours. The provisions of the Building Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. (*Ref. 17-1001, 18-132, 19-902, 19-922 RS Neb.*)

Article 4. Plumbing Code

§9-401 PLUMBING CODE; ADOPTED BY REFERENCE. To provide certain minimum standards, provisions, and requirements for safe and stable installation, methods of connection, and uses of materials in the installation of plumbing and heating shall be as found in the Uniform Plumbing Code, the most recent edition, published by the International Association of Plumbing and Mechanical Officials in book or pamphlet form, is hereby incorporated by reference in addition to all amended editions as though printed in full herein insofar as said code does not conflict with the Statutes of the State of Nebraska.

One (1) copy of the Plumbing Code is on file at the office of the Municipal Clerk and is available for public inspection at the city office during their regular business hours. The provisions of the Plumbing Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. (*Ref. 17-1001, 18-132, 19-902, 19-922 RS Neb.*)

Article 5. Electrical Code

§9-501 ELECTRICAL CODE; ADOPTED BY REFERENCE. To provide certain minimum standards, provisions, and requirements for safe and fire proof installation, methods of connection, and uses of materials in the installation of electrical wiring and appliances shall be as found in the National Electrical Code, the most recent edition, as recommended and published by the National Fire Protection Association, printed in book or pamphlet form, in addition to all amended editions as though printed in full herein insofar as said code does not conflict with the statutes of the State of Nebraska. All prior ordinances in conflict herewith shall be and are hereby repealed.

One (1) copy of the Electrical Code is on file at the office of the Municipal Clerk and is available for public inspection at the city office during their regular business hours. The provisions of the Electrical Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. (*Ref. 17-1001, 18-132, 19-902, 19-922 RS Neb.*)

Article 6. Lighting and Thermal Efficiency Standards

§9-601 LIGHTING AND THERMAL EFFICIENCY STANDARDS; NEED.

1. This article shall be known as the Minimum Lighting and Thermal Efficiency Standards for Buildings.
2. The City of David City, Nebraska finds that there is a present and continuing need to provide for the development and implementation of minimum lighting and

thermal efficiency standards for buildings to insure coordination with federal policy under the Energy Conservation Standards for New Buildings Act of 1976, to promote the conservation of our dwindling energy resources, and to provide for the public health, safety, and welfare.

§9-602 **TERMS; DEFINED.** As used in this Article, unless the context otherwise requires, the following definitions shall apply:

PRIME CONTRACTOR shall mean the person, persons, entity or entities who has a contract with the owner and is the one responsible for the overall construction of any building or the installation of any component which affects the energy efficiency of the building. Prime Contractor shall also mean a property owner who performs the work of a Prime Contractor.

ARCHITECT or ENGINEER shall mean any person registered pursuant to section 81-847, Reissue Revised Statutes of Nebraska, 1943.

BUILDING shall mean any structure which utilizes or will utilize a heating system, cooling system, or domestic hot water system, including new buildings, renovated buildings, and additions, but not including any structure which has a consumption of traditional energy sources for all purposes not exceeding the energy equivalent of one (1) watt per square foot.

RESIDENTIAL BUILDING shall mean a building three (3) stories or less that is used primarily as one (1) or more dwelling units.

RENOVATION shall mean alterations on an existing building which will cost more than fifty (50%) percent of the replacement cost of such building at the time work is commenced or which was not previously heated or cooled, for which a heating or cooling system is now proposed, except that the restoration of historical buildings shall not be included.

ADDITION shall mean any construction added to an existing building which will increase the floor area of that building by five (5%) percent or more.

FLOOR AREA shall mean the total area of a building, expressed in square feet, which is within the exterior face of the shell of the structure which is heated or cooled.

STANDARD shall mean The Model Energy Code, 1983 Edition, of the Council of American Building Officials.

TRADITIONAL ENERGY SOURCES shall mean electricity, petroleum based fuels, uranium, coal, and all nonrenewable forms of energy. (*Amended by Ord. No. 602, 9/14/83*)

§9-603 **STANDARD; APPLICABILITY.** The Standard shall apply to all new buildings, or renovations of or additions to any existing buildings, on which construction is initiated on or after the effective date of this Section. (*Amended by Ord. No. 602, 9/14/83*)

§9-604 **EXEMPTIONS.** The following shall be exempt from this act:

1. Any building which has a peak design rate of energy usage for all purposes of less than one (1) watt, or three and four-tenths (3.4) British Thermal Units per hour, per square foot of floor area.
2. Any building which is neither heated nor cooled.
3. Any building or portion thereof which is owned by the United States of America.
4. Any mobile home as defined by section 71-4603, Reissue Revised Statutes of Nebraska, 1943.
5. Any manufactured housing unit as defined by subsection (1) of section 71-1557, Reissue Revised Statutes of Nebraska, 1943.
6. Any building (i) listed on the National Register of Historic Places, (ii) determined to be eligible for the National Register of Historic Places by the State Historic Preservation Officer, or (iii) designated as an individual landmark or heritage preservation site by a Municipality or located within a designated landmark or heritage preservation district.
7. Any building to be renovated that is located within an area that has been designated blighted by a Municipality.
8. All residential buildings shall be exempt from lighting efficiency standards.
(Amended by Ord. No. 602, 9/14/83)

§9-605 **FEES.** The fees, charges, and expenses for Zoning Permits and Certificates of Zoning Compliance shall be as established by the City Council; such fees, charges, and expenses to be set by Resolution.

The schedule of fees shall be posted in the office of the City Clerk and may be altered or amended only by the City Council. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

§9-606 **WHEN ARCHITECT OR ENGINEER IS RETAINED.** If an architect or engineer is retained, the architect or engineer shall place his or her state registration seal on all construction drawings which shall indicate that the design meets the standard. The Prime Contractor shall build or cause to be built in accordance with the construction documents prepared by the architect or engineer.

§9-607 **VIOLATION; PENALTY; ENFORCEMENT.** Any person violating any provision of this Article shall be subject to a maximum fine of five hundred (\$500.00) dollars. In addition, the City of David City may by an action in the District Court enforce the provisions of this Article through equity and injunctive processes.

§9-608 **VALIDITY.** If any Section in this Article or any part of any Section shall be declared invalid or unconstitutional such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Article 7. Penal Provision

§9-701 **VIOLATION; PENALTY.** Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars for

each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

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

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

Passed and approved this 14th day of September, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Ordinance No. 1009 was passed on first reading on August 10, 2005. Council member Kirby made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting YEA: Council members Schatz, Hein, Lukassen, Kroesing, Smith, and Kirby. Voting NAY: None. The motion carried.

Council member Kirby made a motion to pass Ordinance No. 1009 on the third and final reading. Council member Smith seconded the motion. Voting YEA: Council members Hein, Lukassen, Schatz, Kroesing, Smith, and Kirby. Voting NAY: None. The motion carried.

ORDINANCE NO. 1009

AN ORDINANCE SETTING THE RATES TO BE CHARGED FOR WATER SOLD FROM FILL STATIONS; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

WHEREAS, Section 3-101 of the Municipal Code provides that the Governing Body shall set rates to be charged by Ordinance.

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

Section 1. The following rates shall be charged for water sold from fill stations:

\$5.00 minimum charge

\$5.00	for first	1,000 gallons
\$10.00	for 1,001 to	2,000 gallons
\$15.00	for 2,001 to	3,000 gallons
\$20.00	for 3,001 to	4,000 gallons

\$25.00	for	4,001 to	5,000 gallons
\$30.00	for	5,001 to	6,000 gallons
\$35.00	for	6,001 to	7,000 gallons
\$40.00	for	7,001 to	8,000 gallons
\$45.00	for	8,001 to	9,000 gallons
\$50.00	for	9,001 to	10,000 gallons
.....		etc., etc., etc.,	

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

Section 3. This ordinance shall 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 14th day of September, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

City Attorney Jim Egr stated that he should be appointed Trustee for the Deed of Trusts regarding the CDBG Housing Loans and provided copies of State Statute as follows:

- 76-1003. Trustee; qualification. (1) The trustee of a trust deed shall be:
- (a) A member of the Nebraska State Bar Association or a licensed real estate broker of Nebraska;
 - (b) Any bank, building and loan association, savings and loan association, or credit union authorized to do business in Nebraska under the laws of Nebraska or the United States or an agency of the United States Department of Agriculture involved in lending;
 - (c) Any corporation authorized to conduct a trust business in Nebraska under the laws of Nebraska or the United States; or
 - (d) Any title insurer authorized to do business in Nebraska under the laws of Nebraska.
- (2) The trustee of a trust deed shall not be the beneficiary named in the trust deed unless the beneficiary is qualified to be a trustee under subdivision (1) (b) or (c) of this section.

Therefore, Council member Schatz made a motion to authorize Mayor Smith and City Clerk Kovar to sign the substitution of Trustee for all the Housing Loans appointing Jim Egr as the appointed Trustee under the Deed of Trusts. Council member Kirby seconded the motion. Voting YEA: Council members Hein, Smith, Lukassen, Kroesing, Kirby, and Schatz. Voting NAY: None. The motion carried. The following is a "sample" of the Substitution of Trustee - ten (10) were filed at the County Clerks' Office:

SUBSTITUTION OF TRUSTEE

JAMES M. EGR, ATTORNEY AT LAW
P.O. Box 46
465 4th Street
David City, Nebraska 68632

is hereby appointed Trustee under the Deed of Trust executed by (name of individual that received the housing grant), in which CITY OF DAVID CITY/DAVID CITY HOUSING BOARD is named

Beneficiary and CITY OF DAVID CITY/DAVID CITY HOUSING BOARD, as Trustee, and filed for record _____, and recorded in Film Book _____ at Page _____ in the Offices of the County Clerk of Butler County, Nebraska. The Trust Property affected is legally described as follows:

(Legal description listed here)

Dated: September 14, 2005

CITY OF DAVID CITY/DAVID CITY
HOUSING BOARD

By: Stephen Smith By: Joan E. Kovar

STEPHEN SMITH, Mayor

JOAN E. KOVAR, City Clerk

Council member Kirby introduced Ordinance No. 1010 to vacate "B" Street from 2nd to 3rd Street. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Lukassen seconded the motion. Voting AYE: Council members Hein, Smith, Schatz, Kirby, Lukassen, and Kroesing. Voting NAY: None. The motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1010 on the third and final reading. Council member Kirby seconded the motion. Voting AYE: Council members Smith, Hein, Lukassen, Schatz, Kirby, and Kroesing. Voting NAY: None. The motion carried and Ordinance No. 1010 was passed and adopted as follows:

ORDINANCE 1010

AN ORDINANCE ADOPTED BY THE CITY OF DAVID CITY, NEBRASKA TO VACATE "B" STREET FROM 2ND TO 3RD STREET; TO RETAIN A UTILITY EASEMENT; TO PROVIDE FOR AN EFFECTIVE DATE, AND TO PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1) That "B" Street from 2nd Street to 3rd Street (a distance of approximately 175 feet) in David City, Nebraska, shall be vacated and said street shall revert to the abutting property owners to the North and South of the vacated street.

Section 2) That the City of David City, Nebraska, and its franchisees, shall retain an easement to all existing and future utilities located within said vacated street.

Section 3) That all ordinances and parts of ordinances passed and approved prior to the passage and approval of this ordinance and in conflict therewith are hereby repealed.

Section 4) That this ordinance shall be in full force and take effect from and after its passage, approval and publication according to law.

PASSED AND APPROVED this 14th day of September, 2005.

CITY OF DAVID CITY, NEBRASKA

Stephen Smith, Mayor

Joan Kovar, City Clerk

Council member Kroesing made a motion to enter into an interlocal agreement to provide street cleaning services to communities in Butler County. Council member Lukassen seconded the motion. Discussion followed. This would be an addendum to the original interlocal agreement. Street Superintendent McDonald stated that he was not in favor of this for a number of reasons: 1) the street department has no way to haul the street sweeper, 2) it can only go 28mph and then you should stop every 4 or 5 miles to let it cool off, 3) it will take a street employee practically the entire day to drive to a neighboring community, sweep the streets, and then drive back, and he doesn't have any extra employees, and 4) they don't have specialized CDL Licenses that are probably required. Council member Kirby stated that we shouldn't just discuss the negatives. Council member Kroesing stated that this is a commodity that other communities need. Council member Schatz questioned if this would be cost effective, and/or a wise use of personnel time. Following discussion Kroesing and Lukassen withdrew their motion and second.

Council member Kirby made a motion to table consideration of entering into an interlocal agreement to provide street cleaning services to communities in Butler County. Council member Hein seconded the motion. Mayor Smith stated that City Administrator Fiegenschuh and Street Superintendent McDonald will explore this further, looking at various options, considering the pros and cons, and determining if this would be feasible to do or not. They will then report their findings back to the City Council. Voting YEA: Council members Smith, Schatz, Lukassen, Kroesing, Hein, and Kirby. Voting NAY: None. The motion carried.

Council member Lukassen made a motion to reimburse this years Lifeguards for the cost of the Water Safety Instructor class, provided they passed the WSI training class and worked one full season at the swimming pool. Council member Kroesing seconded the motion. The pool managers will need to submit the names of the lifeguards who qualify for reimbursement to the City Office. Voting YEA: Council members Schatz, Smith, Kirby, Hein, Kroesing, and Lukassen. Voting NAY: None. The motion carried.

City Clerk Kovar presented the following:

From: L. Lynn Rex
Subject: Mileage Reimbursement Rate Change

As noted in the E-mail below, the state mileage reimbursement rate has been raised to \$0.485 effective September 1. The rate is in effect until December 31, 2005. Under Section 13-2203, governing bodies of cities and villages may expend funds to reimburse officers, employees and volunteers for mileage at the rate allowed by the State for State employees under section 81-1176.

E-mail: To Whom It May Concern: This is just an advance warning to let the League of Nebraska Municipalities know that the mileage reimbursement rate has been increased from \$.405 to \$.485 effective September 1, 2005. This rate will be in effect thru December 31, 2005 at which the rate may be increased or decreased. LNM will be receiving a letter in the mail from Paul Carlson, State Accounting Administrator stating this change. If you have any questions, please feel free to contact me.

Thank You,
Raymond Miller III
Auditor - DAS
State Accounting Room 1309

The City's mileage rate is currently \$.375 as it was never increased to \$.405 and is now at \$.485. Discussion followed. Council member Hein stated that city employees are supposed to use the old police car that the Street Department has and therefore shouldn't need to be reimbursed for mileage. The resolution died.

RESOLUTION NO. - 2005

WHEREAS, the Local Government Miscellaneous Expenditure Act provides that local units of government may approve mileage at the rate allowed by §81-1176. The section requires the State Department of Administrative Services to set the mileage rate. The mileage rate at which elected and appointed officials, employees, or volunteers may be reimbursed was increased as of September 1, 2005, to \$.485 per mile.

THEREFORE, BE IT RESOLVED, that the mileage rate be as follows:

Mileage: 48.5 cents per mile.

Passed and approved this _____ day of _____, 2005.

Failed

City Clerk Joan E. Kovar

Failed

Mayor Stephen Smith

Council member Hein made a motion to advance to agenda item #32 - Consideration of going into executive session. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Hein made a motion to go into executive session to finish City Administrator Jeff Fiegenschuh's evaluation and salary negotiations, and also to discuss matters concerning a personnel issue. Council member Kirby seconded the motion. Voting AYE: Council members Smith, Lukassen, Kroesing, Schatz, Kirby, and Hein. Voting NAY: None. The motion carried. The Council, Mayor Smith, City Administrator Jeff Fiegenschuh, Street Superintendent

McDonald, and City Attorney Egr, went into executive session at 9:12 p.m. Street Superintendent McDonald left the executive session at 9:30 p.m.. Council member Schatz was called away at 9:40 p.m. due to an illness in the family.

Council member Kirby made a motion to come out of executive session at 10:02 p.m. Council member Lukassen seconded the motion. Voting AYE: Council members Smith, Hein, Kroesing, Lukassen, and Kirby. Voting NAY: None. Council member Schatz was absent. The motion carried.

Mayor Smith clarified that the Council is considering a "memo of understanding" **not a contract** for City Administrator Fiegenschuh. Council member Kirby made a motion to approve the "memo of understanding" for City Administrator Jeff Fiegenschuh. Council member Kroesing seconded the motion. City Attorney Egr provided the memo of understanding that follows. Voting YEA: Council members Hein, Smith, Lukassen, Kroesing, and Kirby. Voting NAY: None. Council member Schatz was absent. The motion carried.

MEMO OF UNDERSTANDING

This Memo of Understanding, hereinafter called "Understanding", is entered into by and between THE CITY OF DAVID CITY, NEBRASKA, a Nebraska Municipal Corporation, herinafter called "City" and JEFFREY A. FIEGENSCHUH, a married person, hereinafter called "Administrator."

WHEREAS, the City is a Nebraska Municipal Corporation and has provided by Ordinance the appointed position of City Administrator, pursuant to Section 1-201.01 of the City's Municipal Code;

WHEREAS, Administrator serves in the appointed position of City Administrator for the City with duties, responsibilities, and powers pursuant to Sections 1-201.02 and -201.03 of the City's Municipal Code; and,

WHEREAS, Administrator was appointed by the Mayor of the City with the approval of a majority of the City's City Council on June 16, 2003 and has been reappointed thereafter thru the date of this Understanding; and,

WHEREAS, additional duties of Administrator besides those in the aforesaid City Ordinances are listed in the Administrator's Job Description attached hereto, marked Exhibit "A" and incorporated herein by reference as if fully set forth; and,

WHEREAS, the City and Administrator acknowledge that the Employee's Manual of the City contains the reasons in Chapter VII of the same for disciplinary action, including termination (firing) of employment or appointed position; and,

WHEREAS, it is in the mutual benefit of the City and Administrator to reduce to writing the understanding of Administrator's appointment for the 2005-06 fiscal year of the City, which runs from October 1, 2005 thru September 30, 2006.

NOW, THEREFORE, the City and Administrator agree to the following "bullet points" of the Administrator's appointment as City Administrator, to-wit:

- (1) The City and Administrator agree the terms and conditions of this Understanding constitute valuable consideration.
- (2) The City appoints the Administrator to the position of the City's City Administrator for the fiscal year 2005-06, which parties agree runs from October 1, 2005 thru September 30, 2006.
- (3) In the event the City does not reappoint the Administrator for the 2006-07 fiscal year, the City will notify in writing the Administrator of its decision

- not to reappoint Administrator as the City's City Administrator on or before July 31, 2006.
- (4) In the event the Administrator intends not to seek reappointment as the City's City Administrator, Administrator will notify the City of this intent not to seek reappointment in writing to the City on or before July 31, 2006.
 - (5) In the event the City does not reappoint Administrator for the 2006-07 fiscal year, the City will pay Administrator three (3) months severance pay plus one (1) additional month of severance pay for each twelve (12) month period of being the City's City Administrator from the time of appointment hereinbefore stated with the maximum number of months of severance pay, which include the three (3) months stated aforesaid, not to exceed a total of six (6) months. Severance pay would be based upon the monthly pay of Administrator for the 2005-06 fiscal year.
 - (6) In the event Administrator does not accept or does not intend to seek reappointment, Administrator will not be entitled to any severance as hereinbefore stated.
 - (7) Administrator desires not to receive a percentage of grants secured and/or awarded as has been done prior to the 2005-06 fiscal year of the City and Administrator voluntarily and under his own volition desires and requests this change from the past compensation.
 - (8) Compensation to Administration will be FIFTY-FIVE THOUSAND DOLLARS (\$55,000.00) per fiscal year of the City commencing October 1, 2005 with all the normal benefits provided to the other appointed officials and/or employees of the City. Should Administrator be appointed for successive fiscal years of the City, a Cost of Living Adjustment (COLA) will be given at the same percentage as all other appointed officials and/or employees of the City.
 - (9) Should events occur and/or actions of the Administrator occur which bring Administrator within the City's Employee Manual Chapter VII addressing disciplinary action of termination (firing) of Administrator from Administrator's appointed position, such termination (firing) will be immediate and there will be severance pay as stated aforesaid, all salary will cease thru the date of termination (firing), and all benefits will cease except those required by Federal Law to continue or which have options available to the Administrator.
 - (10) Should the City exercise its right to appoint someone other than the Administrator for the 2006-07 fiscal year of the City, Administrator will cease Administrator's duties on August 1, 2006, but will still be entitled to payment of Administrator's two (2) months of salary as normally paid and be entitled to the benefits normally paid thru September 30, 2006 plus the severance provided in Paragraph (5) stated aforesaid.
 - (11) This Understanding may be modified, amended, or changed upon mutual agreement of the City and Administrator in writing executed by the City and Administrator.
 - (12) This Understanding will be binding on the heirs, successors, assigns, and personal representatives of the City and Administrator.

CITY:
THE CITY OF DAVID CITY, NEBRASKA

ADMINISTRATOR:

by: _____
Stephen Smith, Mayor Jeffrey A. Fiegenschuh

Attest:

Joan E. Kovar, City Clerk

State of Nebraska)
)

) ss. County of Butler

The foregoing Memo of Understanding was acknowledged before me on _____, 2005 by Stephen Smith, Mayor of the City of David City, Nebraska, a Nebraska Municipal Corporation, on behalf of the Corporation.

State of Nebraska)

Notary Public
) ss. County of Butler)

The foregoing Memo of Understanding was acknowledged before me on _____, 2005 by Jeffrey A. Fiegenschuh, a married person.

Notary Public

Council member Kirby introduced Ordinance No. 1011. 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 YEA: Council members Smith, Lukassen, Hein, Kirby, and Kroesing. Voting NAY: None. Council member Schatz was absent. The motion carried.

Council member Kirby made a motion to pass and adopt Ordinance No. 1011 on the third and final reading. Council member Kroesing seconded the motion. Voting YEA: Council members Lukassen, Hein, Smith, Kroesing, and Kirby. Voting NAY: None. Council member Schatz was absent. The motion carried and Ordinance No. 1011 was passed and adopted as follows:

ORDINANCE NO. 1011

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA TO SET THE PAY FOR THE CITY ADMINISTRATOR, REPEAL ALL ORDINANCES OR PORTIONS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDE AN EFFECTIVE DATE; AND PROVIDE 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. The Mayor and City Council of David City, Nebraska, do hereby establish and fix the salary for City Administrator Jeff Fiegenschuh at **\$ 55,000.00 per year**, after the passage of this ordinance.

SECTION 2. Any and all ordinances, or sections thereof, passed and approved prior to the passage, approval and publication or posting of this ordinance, and in conflict with its provisions, is hereby repealed.

form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

City Clerk Joan E. Kovar