

## CITY COUNCIL PROCEEDINGS

October 13, 2004

The City Council of the City of David City, Nebraska met in open public session in the meeting room of the City Office, 557 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner-Press on October 7, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notices to the Public, Mayor and Council members conveyed the availability of the Agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Stephen Smith, Council members Gary L. Kroesing, Ted Lukassen, Mark Kirby, Gary Smith, Nick Hein, and Bill Schatz, City Administrator Jeff Fiegenschuh, Attorney Jim Birkel, Police Chief Stephen Sunday, Water/Sewer Supervisor Jim Kruse, Banner Press Editor Larry Peirce, Zoning Administrator Roger Kotil, Power Plant Operator Eric Betzen, Ken Fairchild of Olsson Associates, John Klosterman, Gina Barlean, Larry McPhillips, and Jason Lavicky representing the Home Town Competitiveness Program, Deana Barger of the Department of Environmental Quality, and City Clerk-Treasurer Joan E. Kovar.

The meeting opened with the Pledge of Allegiance.

The minutes of the September 8, 2004 meeting of the Mayor and City Council were approved upon a motion by Council member Smith and seconded by Council member Kirby. Voting YEA: Council members Hein, Schatz, Lukassen, Kroesing, 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. A thank you was read from previous City Administrator Andrew Brannen in recognition of receiving his 2% of the Peter Kiewit grant he obtained for the Aquatic Center.

Council member Kroesing received calls from two people from the Senior Center questioning why there wasn't a stop sign at 6<sup>th</sup> & "D" Streets. Kroesing visited with Street Superintendent Jim McDonald who stated that according to the Universal Driving Code, a stop sign is not feasible unless the intersection is utilized by 250 vehicles per hour.

The Youth Center parking lot (660 5<sup>th</sup> Street) was discussed. There are several semi-trucks being parked there as well as an unlicensed camper. Police Chief Sunday stated that during snow removal he advises people to park in the Youth Center parking lot until the downtown area has been cleared of snow. The semi's have just shown up. It was decided that Police Chief Sunday will see that the unlicensed vehicles are removed from the lot and determine who the owners are of the semi-trucks. It will also be checked to see if those using truck plugs are paying for them.

Littering along 5<sup>th</sup> Street between "C" Street and the Union Pacific Railroad track was discussed. The youth gather there in their cars to visit, especially on the week-ends, and the

following morning the street is littered with debris. Police Chief Sunday stated that the police

must actually see them drop the item or be able to identify who dropped it. Council member Schatz suggested approaching the B.C. Youth Council to see if they would have suggestions or in some way could help alleviate the problem.

Mayor Smith asked for consideration of claims. Council member Kirby made a motion to authorize the payment of claims. Council member Hein seconded the motion. Voting YEA: Council members Lukassen, Schatz, Kroesing, Smith, Hein, 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 introduced Deana Barger of the Department of Environmental Quality who presented two awards to the City for being pro-active in their efforts to protect the source of the drinking water supply. One award was for 2003 in which the City installed the containment unit by the power plant, protective fencing around the water wells, and held the groundwater festival. The groundwater festival was held on May 14<sup>th</sup> at the David City Municipal Auditorium and focused on water conservation and causes of ground water pollution. Various activities included water sampling at the park lakes and an educational forum. The award for 2004 was for water re-use due to our plans and efforts to use effluent to water the golf course. Approximately \$63,000 was awarded to David City over the two years.

City Administrator Fiegenschuh reported the following:

1) Even though the City appealed a Notice of Determination concerning an unemployment claim in which the employee voluntarily quit the position, the City is still responsible for payment of the claims.

2) An invoice in the amount of \$5,235.00 was received from Burbach Aquatics. Jeff notified them that he was not going to pay the invoice until an itemized/detailed invoice was received. City Attorney Egr had advised not to pay the invoice until a detailed bill was received because some of the repairs should have been covered by the warranty. A fax was received which states the City now owes \$6,361.00 (\$5,235.00 + \$1,126.00 interest). The bill will not be paid until a detailed invoice is received by the City and Burbach explains the billing.

Police Chief Sunday reported that he was asked by Audrey Mathiesen, a teacher at David City High School, if students could canvass the town and charge to paint house numbers on the side of curbs to interested citizens. The Council had no objections.

Mayor Smith scheduled a Committee of the Whole meeting for Monday, October 25, 2004 at 6:00 p.m. in the meeting room of the City Office.

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

Council member Kirby made a motion to advance to agenda item #9 - 7:45 p.m. Special Hearing to discuss the proposed changes to David City's Economic Development Reuse Plan. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mayor Smith opened the Public Hearing at 7:48 p.m. City Administrator Fiegenschuh reported that he contacted the State of Nebraska who approved changes in the Reuse Plan as

long as it aides low to moderate income residents. The following proposed changes are in **bold** print:

Section 2.2 Selection of Applicants

There will be a CDBG Revolving Loan Fund Review Committee established. The Committee shall consist of five members appointed by the Mayor and City Council for staggered three-year terms. Two members (each from a different financial institution) shall have banking and loan experience, one member shall be an accountant or a certified public accountant, one member shall be a resident of the community with business experience, one member shall be a member of the city council. The City Administrator of David City shall be an ex-officio member of the committee without a vote and shall be designated Revolving Loan Fund Administrator having the authority to call meetings. A Chairperson will be designated annually by the committee.

The committee shall review loan applications, assist the administrator with establishing terms of the loan, and make recommendations as to whether or not a loan should be made. The committee shall review the Revolving Loan Fund Portfolio, the certified annual audits and reports as soon as reasonably possible after receipt; and make recommendations to the administrator as to changes of the program, goals, priorities, loan standards and financial policy. A committee member shall have the right to request additional information from the loanee.

The committee shall review "conflict of interest" situations and determine whether or not a loan should be made. Such conflict of interest would include elected and appointed city officials and their families. Full disclosure of any such conflict shall be in writing and shall be part of the application for assistance.

The City Council of David City may, by resolution, approve any loan made from the Revolving Loan Fund. **On a case-by-case basis, the city council may redirect funds for the development of programs that benefit the city's long-term economic development goal of job creation that would benefit low and moderate-income persons. These groups include but are not limited to:**

- a) education and training,**
- b) entrepreneurship,**
- c) small business transfer,**
- d) investment capital**
- e) marketing, and value-added agriculture**

It is not intended that the City Council will arrange loans or loan conditions but will exercise final approval authority. The City Council may approve or modify the CDBG Revolving Loan Fund Program, except that initial loan contractual conditions established with state or federal agencies cannot be changed without their approval.

The CDBG Revolving Loan Fund Administrator will:

-Develop and compile the elements of a loan project and report to the revolving loan review committee and the city council as required,

- Serve the revolving loan review committee by appointing a secretary to arrange meetings, record minutes of the meetings, and assist in administering and recording of loan funds
- Promote the revolving loan fund program by making it known to other development agencies, banks and prospective borrowers.
- Assist in developing loan packages.
- Review loan applications.
- Arrange for servicing loans.
- Assist the committee in developing a recapitalization strategy for the revolving loan and administer the fund.
- Secure legal review and service as required
- Secure an annual certified report of the fund and publish an annual report of the program activities. He will make other reports as required by federal and state agencies.
- Provide continuity and timeliness of program activities.

Mayor Smith closed the Public Hearing at 8:00 p.m.

Council member Lukassen made a motion to accept the changes in language to the application process to the David City Economic Development Reuse Plan. Council member Schatz seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Kirby made a motion to advance to agenda item #10 - Consideration of a Resolution allocating a \$30,000 grant to the David City Area Foundation to fund a portion of the Home Town Competitiveness Program (HTC). Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Kirby made a motion to pass and adopt Resolution No. 23 - 2004. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. Resolution No. 23 - 2004 was passed and adopted as follows:

**RESOLUTION NO. 23 - 2004**

WHEREAS, the City of David City has the authority to allocate money from the David City Economic Development Revolving Loan Funds, and

WHEREAS, the City of David City held a public hearing at the regularly scheduled City Council meeting on October 13, 2004 to hear opposition and support for allocating \$30,000 from the reuse fund to the David City Area Foundation to help support the Hometown Competitiveness Program, and

WHEREAS, the David City Economic Development Reuse Committee voted in favor of recommending the allocating of \$30,000 from the reuse account to the David City Area Foundation, and

WHEREAS, this allocation of \$30,000 will be a one time grant-in aid to the David City Area Foundation to support its involvement in the Hometown Competitiveness Program, and

WHEREAS, the allocated \$30,000 will not be used to pay the salaries of any new personnel to be hired by the David City Area Foundation to help with the Hometown Competitiveness Program, and

WHEREAS, the allocated \$30,000 will be used solely to aid low and moderate income residents, and

WHEREAS, the City Council retains the right to cancel this contract with the David City Area Foundation if the organization does not use the \$30,000 to meet national CDBG objectives of benefitting low and moderate income residents.

THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of David City, that the City of David City will allocate a grant in the amount of \$30,000 to the David City Area Foundation to participate in the Hometown Competitiveness Program.

Dated this 13<sup>th</sup> day of October, 2004

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Hein made a motion to advance to agenda item #8 - Consideration of accepting the bid of Olsson Associates to conduct an Electric Rate Study. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Ken Fairchild, Electrical Engineer for Olsson Associates, introduced himself. The electric rate committee, consisting of City Administrator Fiegenschuh, Council members Gary Kroesing and Gary Smith, Electric Supervisor Tim Kovar, and City Clerk Joan Kovar reviewed the proposals from Olsson Associates and JEO Consulting Group, Inc., is recommending the proposal from Olsson Associates as follows:

**Re: AGREEMENT FOR PROFESSIONAL SERVICES**  
("Project") David City, Nebraska

Cost of Service Electric Rate Study

Dear Honorable Mayor and Council Members:

It is our understanding that the City of David City ("Client") requests Olsson Associates ("OA") to perform the following services pursuant to the terms of this Letter Agreement, OA's General Provisions and any exhibits attached thereto (hereinafter "the Agreement") for the Project.

1. OA has acquainted itself with the information provided by Client relative to the Project and based upon such information offers to provide the services described below for the Project. Client acknowledges that it has reviewed the General Provisions (and any exhibits attached thereto), which are expressly made a part of and incorporated into this Agreement by this reference. In the event of any conflict or inconsistency between this Agreement and the General Provisions regarding the services to be performed by OA, the requirements of this Agreement shall take precedence.

2. OA shall provide Client all Basic Services for the Project as more specifically described in Exhibit A hereto. Should Client request work not described and included in the above Description of Basic Services, such as Additional Services, OA shall invoice Client for such services on the basis of Salary Costs times a factor of 2.5 for services rendered by our principals and employees engaged directly on the Project plus Reimbursable Expenses, unless otherwise agreed to by both parties. OA shall not commence work on Additional Services without Client's prior approval in writing.

OA agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

#### **SCHEDULE FOR OLSSON ASSOCIATES'S SERVICES**

3. Unless otherwise agreed, OA would expect to begin performing its services under this Agreement promptly upon your signing.

Anticipated Start Date: 15 July 2004?? Anticipated Completion Date: 15 October 2004??

#### **COMPENSATION**

4. Compensation for OA's services shall be a fixed fee of Sixteen Thousand Dollars (\$16,000.00).

5. REIMBURSABLE EXPENSE: OA's reimbursable expenses for this Project are included in the fixed fee set forth in Paragraph 4 above.

These financial arrangements are proposed with the assumption OA's bills will be paid promptly and the Project will progress orderly and continuously. Client agrees to pay OA the amounts due for services rendered and expenses incurred pursuant to the terms of this Agreement within thirty (30) days after OA has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give OA written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to OA the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved

in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

#### **TERMS AND CONDITIONS OF SERVICE**

6. We have discussed with you the risks, rewards and benefits of the Project and our fees for services. The risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, QA's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through us under this Agreement, shall not exceed the total amount of OA's fees earned under this Agreement. Client acknowledges that such causes include, but are not limited to, OA's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.
7. The Agreement represents the entire understanding between Client and OA with respect to the Project and may only be modified in writing signed by both parties.
8. If this proposal satisfactorily sets forth your understanding of our agreement, please sign the Letter Agreement in the space provided (indicating Client's designated Project representative if different from the party signing the Agreement). Retain a copy for your files and return an executed original to OA.
9. By signing below, you acknowledge that you have full authority to bind Client to this agreement.

**OLSSON ASSOCIATES**

By Ken Fairchild

If you are in agreement with the preceding proposal, please sign:

City of David City ("Client")

By: \_\_\_\_\_ Title: Mayor Stephen Smith

Dated:

Council member Kroesing made a motion to accept the bid of Olsson Associates to conduct an electric rate study. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mayor Smith declared a ten minute recess at 8:15 p.m. The meeting resumed at 8:25 p.m.

Council member Smith made a motion to advance to agenda item #11 - Consideration of awarding a contract for the SCADA system at the power plant. Council member Kirby seconded the motion. Voting YEA: Council members Lukassen, Hein, Schatz, Kroesing, Smith, and Kirby. Voting NAY: None. The motion carried.

The following proposals from Harold K. Scholz Company and E. A. Pedersen Company for the SCADA system at the power plant were discussed:

**Harold K. Scholz Company**  
**Box 27067**  
**7800 Serum Avenue**  
**Ralston, Nebraska 68127-0067**  
**(402) 339-7600**

We are pleased to quote a Supervisory Control and Data Acquisition (SCADA) system to provide communication and data transfer between the Power Plant and the North Substation. The items offered below will use the existing programmable logic controller

(PLC) in the Power Plant as a master and a new PLC in the substation. Fiber-optic cable will be used to transmit data between the PLC's.

**Item 1) North Substation Data Gathering Terminal**

- 1 North Substation programmable logic controller (PLC) system
- 3 Power Meters installed at North Substation
- 6 PLC controlled breaker trip/close relays for switchgear breakers
- 2 Reclosing relay ON-OFF control for switchgear feeder breakers
- 1 PLC/Power Meter communication module at North Substation
- 1 PLC discrete input and output modules at North Substation

**Item 1 Price: \$18,900.00**

**Item 2) North Substation Equipment Installation**

- 1 Install PLC in the switchgear and connect to existing switchgear battery
- 3 Install power meters and connect to existing current and potential circuits
- 1 Install communication network from PLC to power meters
- 3 Connect breaker status contact to PLC inputs
- 6 Install and connect breaker trip/close relay for switchgear breakers
- 2 Install and connect reclosing relay for switchgear feeder breakers
- 1 Lot of miscellaneous wiring materials to install the above items
- 1 Lot of schematic drawings and instruction manuals

**Item 2 Price: \$12,800.00**

**Item 3) Power Plant Master Computer Station**

- 1 Furnish and install computer and software at Power Plant
- 1 North Substation one-line/control/meter display screen(s)
- 1 Data logging of North Sub, South Sub, Total City & Total NPPD loads
- 1 Printable trends of North Sub, South Sub, Total City & Total NPPD loads
- 1 Provide operator training and instruction manual

**Item 3 Price: \$13,300.00**

**Item 4) Power Plant Control Panel**

- 1 Furnish and Install control panel at Power Plant
- 2 Wattmeters for North Substation feeders
- 3 Breaker control switches and red/green indicating lights
- 2 Reclosing relay ON-OFF control switches for North Substation feeders
- 1 PLC discrete input and output modules in control panel
- 1 Furnish and install conduit and communication cable to control panel
- 1 Lot of miscellaneous wiring materials to install the above items

**Item 4 Price: \$17,300.00**

**Item 5) Power Plant/North Substation Communications**

- 1 Furnish & install fiber-optic converter in existing Power Plant panel
- 1 Furnish & install fiber-optic converter in the North Substation
- 1 Termination of fiber-optic cable
- 1 Lot of miscellaneous wiring materials to install the above items

**Item 5 Price: \$6,600.00**

NOTE: There is approximately 8,500 feet of fiber-optic cable required.  
Our price for a 6-fiber multi-mode cable only is \$633.00 per thousand feet;  
however, installation of the cable is not included.

**Item 6) North Substation Main Breaker Synchronizing**

- 1 Outdoor potential transformer on the North Substation steel structure
- 1 Conduit and wiring from potential transformer to switchgear
- 1 Conduit and wiring from transformer tap changer control to switchgear
- 1 Incoming voltmeter on Power Plant control panel
- 1 Tap changer position meter on Power Plant control panel

- 1 Tap changer AUTO-MAN switch on Power Plant control panel
- 1 Tap changer LOWER-RAISE switch on Power Plant control panel
- 1 Synchronism check protective relay
- 1 Lot of miscellaneous wiring materials to install the above items

**Item 6 Price: \$11,700.00**

Sales tax is included in the above prices. We estimate completion 6-8 weeks after receipt of order.

Thank you for this opportunity to quote. Please do not hesitate to call if you have any questions or if you would like to discuss this further.

Sincerely,  
H. K. Scholz Co.

*John Fuchs*

John Fuchs

E. A. PEDERSEN COMPANY  
3900 Dahlman Avenue  
Omaha, Nebraska 68107-1594 Telephone (402) 734-3900 FAX (402) 734-0622

September 27, 2004

Jeff Fiegenschuh  
City of David City  
P.O. Box 191  
557 4th Street  
David City, NE 68632

RE: Request for proposal, SCADA system

Dear Jeff:

We are pleased to offer a quotation for the Supervisory and Data Acquisition System per your faxed, request dated, September 01, 2004. Our proposal is based on utilizing the existing PLC in the power plant and adding a new PLC in the North Substation.

To make it easier for the city to evaluate and compare our proposal we have followed the same pricing format as that provided.

**Item 1 - North Substation Data Gathering Terminal**

· 1 North Substation Programmable Logic Controller (PLC) · 3 Furnish Power Meters · 6 Furnish PLC cont

Item I Price: \$ 33,442.00

**Item 2 - North Substation Equipment Installation**

- 1 Install North Substation Programmable Logic Controller (PLC)
- 3 Install Power Meters
- 6 Install PLC controlled breaker Trip/Close Relays
- 2 Install Reclosing relay on-off control switch
- 1 Install PLC/Power meter communications module
- 1 Install PLC Discrete input and output modules
- 1 Lot of wiring to connect above items
- 1 Lot of schematic drawings and instruction manuals

Item 2 Price: \$13,286.00

**Item 3 - Power Plant Master Computer Station**

- 1 Furnish and install computer and software
- 1 furnish and install computer desk
- 1 North substation one-line/control/meter display screen
- 1 Data logging North sub, South sub, Total City and NPPD loads
- 1 Printable trends of North sub, South sub, Total City and NPPD loads
- 1 Provide Operator training and instruction manuals

Item 3 Price: \$ 31,067.00

**Item 4 -Power Plant Control Panel**

- 1 Furnish and install control panel with the following devices
  - o 2 Watt meters for North sub feeders
  - o 3 Breaker control switch with red/green indicating lights
  - o 2 Reclosing relay on-off control switches :for North sub feeders
  - o 1 PLC discrete input and output modules
- 1 All conduit and wire necessary to connect to control room

Item 4 Price: \$ 63,383.00

**Item 5 - Power Plant/North Substation Communications**

- 1 Furnish and install fiber optic converter in existing power plant panel
- o 1 Furnish and install fiber optic converter in North Substation
- 1 Terminate Fiber optic cable
- o 1 All wiring material to connect above items
- Fiber optic cable from power plant to North Substation is to be FURNISHED AND INSTALLED BY OWNER

Item 5 Price: \$ 3,063.00

**Item 6 - North Substation Main Breaker Synchronizing**

- 1 Furnish and Install potential transformer on substation structure
- 1 Conduit and wire from potential transformer to switchgear
- 1 Conduit and wire from transformer load tap changer to switchgear 1 Incoming voltmeter on power plant control panel
- 1 Tap changer position indicator on power plant control panel
- 1 Tap changer Auto/Manual switch on power plant control panel
- 1 Tap changer Raise/Lower Switch on power plant control panel
- o 1 Synch check protective relay
- 1 All wiring necessary for connection of devices

Item 6 Price: \$ 24,280.00

**Total Price of Proposal: \$168,521.00**

Sales tax is included in the above pricing.

Estimated completion 11-13 weeks after receipt of order.

Thank you for the opportunity to quote. We look forward to working with the city on this project. If you have any questions, please do not hesitate to call.

Sincerely,

***Robert A. Hague***

Robert A. Hague

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Vice President - Construction  
E. A. Pedersen Company

David City Municipal Utilities  
557 4th St.  
David City, NE 68632

Attn: Mr. Jeff Fiegenschuh

Re: North Substation SCADA

Dear Jeff:

We are pleased to quote furnishing and installing a fiber-optic cable to connect the North Substation to the City's Municipal Power Plant. The fiber-optic cable that we are offering is a 12-fiber, 62.5 micron, multi-mode cable. Our proposal includes removing the existing copper-wire cable and junction boxes, installing and lashing new fiber-optic cable to the existing steel messenger cable, pulling the cable into the Substation and Power Plant, terminating the fibers, and testing the cable.

Total Price: \$32,400.00

The above price includes the removal of the existing copper-wire cable and junction boxes. You have the option to leave the cable and abandon in place, or have your city crews remove the copper-wire cable and leaving the steel messenger cable. If you chose either of these options there will be a price deduct of \$7,800.00.

Sales tax is included in the above prices. We estimate completion 6-8 weeks after receipt of order.

Thank you for this opportunity to quote. Please do not hesitate to call if you have any questions or if you would like to discuss this further.

Sincerely,  
H. K. Scholz Co.

*John Fuchs*

John Fuchs

The Council questioned why there was such a discrepancy between the two bids. Council member Hein questioned what capability the SCADA system will provide. Power Plant Operator Eric Betzen explained that currently the power plant has no communication with the north sub. This will provide computerized controls at the power plant in which to run the north sub. Council member Kirby stated that with the SCADA system there will need to be communication between the power plant and the electric line crew so there aren't safety issues. Council members Kroesing and Kirby stated they have never worked with fiber-optic cable, but it is their understanding that the cable needs to be strung under tension which requires expertise and

equipment. Kroesing and Kirby agreed that Electric Supervisor Tim Kovar's crew does not have the necessary equipment to install the fiber optic cable, and therefore the Council may also need to consider quotes for furnishing and installing the fiber-optic cable. Council member Kirby also questioned if there was a warranty on the fiber optic cable. Council member Kirby stated that he was not comfortable with either bid due to the discrepancy between the two and would feel more comfortable if there was a third bid to consider. Therefore, Council member Kirby made a motion to table consideration of awarding a contract for the SCADA system at the power plant until the November council meeting. Council member Hein seconded the motion. All of the council members were present, all voted YEA, and the motion carried. City Administrator Fiegenschuh will try to obtain a third bid for the SCADA system, and the warranty on the fiber-optic cable will be checked.

Council member Hein made a motion to advance to agenda item #16 - Consideration of a Resolution concerning the Terry & Lori Colburn property located at 1255 N. 9<sup>th</sup> Street. Council member Kirby seconded the motion. Voting YEA: Council members Lukassen, Schatz, Kroesing, Smith, Hein, and Kirby. Voting NAY: None. The motion carried.

Council member Hein introduced Resolution No. 24 - 2004 and moved for its passage and adoption. Council member Lukassen seconded the motion. Voting YEA: Council members Schatz, Kirby, Smith, Kroesing, Lukassen, and Hein. Voting NAY: None. The motion carried and Resolution No. 24 - 2004 was passed and adopted as follows:

**RESOLUTION NO. 24 - 2004**

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 December 6, 2001, declared the property located at 1255 N. 9<sup>th</sup> 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 January 8, 2003 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 May 14, 2003, regarding the property located at 1255 N. 9<sup>th</sup> 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 May 14, 2003, does hereby declare said property, owned by Terry and Lori Colburn, 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 1255 N 9<sup>th</sup> 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, October 13, 2004, unless a notice of appeal is made with the District Court of Butler County, Nebraska.

DATED, this 13<sup>th</sup> day of October, 2004.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Hein made a motion to advance to agenda item #17 - Consideration of a Resolution concerning the Barb Vogl property located at 1070 No. 8<sup>th</sup> Street. Council member Kroesing seconded the motion. Voting YEA: Council members Lukassen, Schatz, Kirby, Smith, Hein, and Kroesing. Voting NAY: None. The motion carried.

Council member Hein introduced Resolution No. 25 - 2004 and moved for its passage and adoption. Council member Kroesing seconded the motion. Voting YEA: Council members Schatz, Kirby, Smith, Lukassen, Kroesing, and Hein. Voting NAY: None. The motion carried and Resolution No. 25 - 2004 was passed and adopted as follows:

**RESOLUTION NO. 25 - 2004**

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 6, 2004, declared the property located at 1070 N. 8<sup>th</sup> 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 May 12, 2004 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 May 12, 2004, regarding the property located at 1070 N. 8<sup>th</sup> 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 May 12, 2004, does hereby declare said property, owned by Barb Vogl, 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 1070 N. 8<sup>th</sup> 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, October 13, 2004, unless a notice of appeal is made with the District Court of Butler County, Nebraska.

DATED, this 13<sup>th</sup> day of October, 2004.

Mayor Stephen Smith

City Clerk Joan E. Kovar

The ordinance to amend the land use plan by changing the zoning classification of real estate located west of Aquinas High School (part of the SW 1/4 of Section 30, Township 15, Range 3 East, containing 23 acres more or less) from Highway Commercial (HC) back to Mobile Home Residential (MHR) was discussed. It was decided that this requires a Public Hearing and needs to be brought before the Planning Commission.

Council member Schatz made a motion to table consideration of the ordinance to amend the land use plan by changing the zoning classification of real estate located in part of the SW 1/4 of Section 30, Township 15, Range 3 East, containing 23 acres more or less from Highway Commercial (HC) to Mobile Home Residential (MHR) until the December council meeting.

Council member Lukassen seconded the motion. Voting YEA: Council members Kroesing, Kirby, Smith, Hein, Lukassen, and Schatz. Voting NAY: none. The motion carried.

**ORDINANCE NO.**

AN ORDINANCE TO AMEND THE LAND USE PLAN BY CHANGING THE ZONING CLASSIFICATION OF REAL ESTATE DESCRIBED FROM HIGHWAY COMMERCIAL (HC) TO MOBILE HOME RESIDENTIAL (MHR), REPEAL ANY ORDINANCES IN CONFLICT HEREWITH; 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 the land use plan be amended as follows:

a. To amend the following property from Highway Commercial to Mobile Home Residential:

part of the SW 1/4 of Section 30, Township 15,  
Range 3 East, containing 23 acres more or less

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 its provisions, is hereby appealed.

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 adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

**(Tabled to December council mtg.)**  
Mayor Stephen Smith

**(Tabled to the December council mtg.)**  
City Clerk Joan E. Kovar

Ordinance No. 985 was discussed. Council member Schatz feels that the dog tag fee should be waived or reduced if the dog is spayed or neutered. Council member Kroesing stated he did not feel that the fee should be waived as the City should at least recoup the cost of the tags and receipts, and that the cost of a dog tag is a measly amount to a responsible dog owner. Council member Hein stated that a reduced fee would be an incentive to have pets spayed or neutered. Council member Kroesing expressed concerns regarding §6-111 - stating that not even the police should have the authority to poison dogs. Section §6-111 will be researched further. Other changes were made as indicated in the ordinance. Council member Kroesing made a motion to pass Ordinance No. 985 on the second reading only. Council member Smith seconded the motion. Voting YEA: Council members Kirby, Lukassen, Schatz, Hein, Smith, and

Kroesing. Voting NAY: None. The motion carried and Ordinance No. 985 was passed on second reading as follows:

**ORDINANCE NO.**

**985**

**AN ORDINANCE AMENDING CHAPTER 6: POLICE REGULATIONS OF THE DAVID CITY MUNICIPAL CODE BOOK; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.**

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

Section 1. Chapter 6: Police Regulations of the David City Municipal Code Book be amended to read as follows:

Chapter 6  
**POLICE REGULATIONS**

**Article 1. Dogs**

**§6-101 DOGS; LICENSE.** Any person who shall own, keep, or harbor a dog over the age of six (6) months within the Municipality shall within thirty (30) days after acquisition of the said dog acquire a license for each such dog. The renewal date for a dog license shall be the first (1<sup>st</sup>) day of May of each year. The said tax shall be delinquent from and after May tenth (10<sup>th</sup>); Provided, the possessor of any dog brought into or harbored within the corporate limits subsequent to May first (1<sup>st</sup>) of any year, shall be liable for the payment of the dog tax levied herein and such tax shall be delinquent if not paid within ten (10) days thereafter. Licenses shall be issued by the Municipal Clerk upon the payment of a license fee of seven (\$7.00) dollars for each **spayed or neutered dog, and ten (\$10.00) for each dog not spayed or neutered.** Said license shall not be transferable and no refund will be allowed in case of death, sale, or other disposition of the licensed dog. The owner shall state at the time the application is made and upon printed forms provided for such purpose, his name and address and the name, breed, color, and sex of each dog owned and kept by him. A certificate that the dog has had a rabies shot, effective for the ensuing year of the license, shall be presented when the license is applied for and no license or tag shall be issued until the certificate is shown. (*Ref. 17-526, 54-603, 71-4412 RS Neb.*) (*Amended by Ord. No. 546, 4/25/79*)

**§6-102 DOGS; LICENSE TAGS.** Upon the payment of the license fee, the Municipal Clerk shall issue to the owner of a dog license certificate and a metallic tag for each dog so licensed. The metallic tags shall be properly attached to the collar or harness of all dogs so licensed and shall entitle the owner to keep or harbor the said dog until the thirtieth (30<sup>th</sup>) day of April following such licensing. In the event that a license tag is lost and upon satisfactory evidence that the original tag was issued in accordance with the provisions herein, the Municipal Clerk shall issue a duplicate or new tag for the balance of the year at no charge. All license fees and collections shall be immediately credited to the General Fund. It shall be the duty of the Municipal Clerk

to issue tags of a suitable design that are different in appearance each year.

- §6-103 DOGS; WRONGFUL LICENSING.** It shall be unlawful for the owner, keeper, or harbinger of any dog to permit or allow such dog to wear any license, metallic tag or other Municipal Identification than that issued by the Municipal Clerk for dogs, nor shall the owner, keeper, or harbinger wrongfully and knowingly license an unsprayed female dog with a license prescribed for a male or spayed female dog.
- §6-104 DOGS; OWNER DEFINED.** Any person who shall harbor or permit any dog to be for ten (10) days or more in or about his or her house, store, or enclosure, or to remain to be fed, shall be deemed the owner and possessor of such dog and shall be deemed liable for all penalties herein prescribed. *(Ref. 54-606, 71-4401 RS Neb.)*
- §6-105 DOGS; PROCLAMATION.** It shall be the duty of the Governing Body whenever in its opinion the danger to the public safety from rabid dogs is great or imminent, to issue a proclamation ordering all persons owning, keeping, or harboring any dog to muzzle the same, or to confine it for a period of not less than thirty (30) days or more than ninety (90) days from the date of such proclamation, or until such danger is passed. The dogs may be harbored by any good and sufficient means in a house, garage, or yard on the premise wherein the said owner may reside. Upon issuing the proclamation it shall be the duty of all persons owning, keeping, or harboring any dog to confine the same as herein provided.
- §6-106 DOGS; UN-COLLARED.** All dogs found running at large upon the streets and public grounds of the Municipality without a collar or harness are hereby declared a public nuisance. Un-collared dogs found running at large may be killed by the Municipal Police. *(Ref. 54-604 RS Neb.)*
- §6-107 DOGS; RUNNING AT LARGE.** It shall be unlawful for the owner of any dog, whether licensed or unlicensed, to allow such dog to run at large in the Municipality. "Running at Large" shall mean any dog found off the premise of the owner, and not under control of the owner or a responsible person, either by leash, cord, chain, wire, rope, cage or other suitable means of physical restraint.
- §6-107.01 DOGS; IMPOUNDMENT FEES WHEN DOGS LICENSED OR UNLICENSED ARE IMPOUNDED.** Impoundment of dogs within the City of David City, Nebraska, shall be accomplished by the Municipal Police or person designated by the Mayor when found "running at large." There shall be a boarding fee for each day the dog is impounded by the City, which shall be the responsibility of the owner. In addition there shall be a general impoundment fee of five dollars (\$5.00) for the first impoundment of a dog during any license year; then ten dollars (\$10.00) for the second impoundment during any license year; fifteen dollars (\$15.00) for the third impoundment during any license year.
- All such fees, together with proof that a dog is licensed in accordance with the provisions of this Chapter, before any dog is released. When all fees have been paid to the City, the dog may be returned to the owner. *(Ord. No. 546, 4/25/79)*  
*(Amended by Ord. No. 706, 4/12/89)*
- §6-108 DOGS; CAPTURE IMPOSSIBLE.** The Municipal Police shall have the authority to kill any animals showing vicious tendencies, or characteristics of rabies which make

capture impossible because of the danger involved. (Ref. 54-605 RS Neb.)

**§6-109 DOGS; VICIOUS.** It shall be unlawful for any person to own, keep, or harbor any dog of a dangerous or ferocious disposition that habitually snaps or manifests a disposition to bite. If any vicious or dangerous dog is allowed to run at large, the Municipal Police shall have the authority to put the dog to death. Upon the complaint of one (1) or more affected persons, filed with the Municipal Police Department, that any dog owned by the person named in the complaint is committing injury to persons or property, or is an annoyance, dangerous, offensive or unhealthy, the Municipal Police Department shall investigate the complaint and, if in their opinion the situation warrants, shall notify the owner to ~~get rid~~ **dispose** of the dog. If the Municipal Police Department is unable to locate the owner of the dog, or if the owner of the dog fails to restrain such dog, the Municipal Police Department shall take custody of the dog, and impound said dog. The owner of the dog shall be required to pay impoundment fees as set forth in Municipal Code 6-107.01, before the dog will be released. (Amended by Ord. No. 813, 10/11/95)  
**(The Council would like to see this section 6-109 re-written.)**

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

**§6-111 DOGS; KILLING AND POISONING.** *It shall be unlawful to kill, or to administer, or cause to be administered, poison of any sort to a dog, or in any manner to injure, maim, or destroy, or in any manner attempt to injure, maim, or destroy any dog that is the property of another person, or to place any poison, or poisoned food where the same is accessible to a dog; provided, that this section shall not apply to Municipal Policemen acting within their power and duty.* (Ref. 28-1002 RS Neb.)  
**- - - This will be researched further! - - -**

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

investigate the complaint and, if in the opinion the situation warrants, shall notify the owner to silence and restrain such dog. If the Police Department is unable to locate the owner of the dog, or if the owner of the dog fails to silence and restrain such dog, the Police Department may take custody of the dog, and impound such dog. The owner of the dog shall be required to pay impoundment fees as set forth in Municipal Code 6-107.01, before the dog will be released. (Amended by Ord. Nos. 804, 12/14/94; 813, 10/11/95)

**§6-113 DOGS; LIABILITY OF OWNER.** It shall be unlawful for any person to allow a dog owned, kept, or harbored by him, or under his charge or control, to injure or destroy

any real or personal property of any description belonging to another person. The owner or possessor of any such dog, in addition to the usual judgment upon conviction, may be made to be liable to the persons so injured in an amount equal to the value of the damage so sustained. (*Ref. 54-601, 54-602 RS Neb.*)

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

## Article 2. Animals Generally

- §6-201 **ANIMALS; RUNNING AT LARGE.** It shall be unlawful for the owner, keeper, or harbinger of any animal, or any person having the charge, custody, or control thereof, to permit a horse, mule, cow, sheep, goat, swine, or other animal to be driven or run at large on any of the public ways and property, or upon the property of another, or to be tethered or staked out in such a manner so as to allow such animal to reach or pass into any public way. (*Ref. 16-235, 17-506, RS Neb.*)
- §6-202 **ANIMALS; CRUELTY.** No person shall cruelly or unnecessarily beat, overwork, or insufficiently shelter or feed any animal within the Municipality. (*Ref. 28-1001, 28-1002 RS Neb.*)
- §6-203 **ANIMALS; KILLING AND INJURING.** No person shall kill or injure any animal by the use of firearms, stones, clubs, poisons, or any other manner unless the animal is vicious or dangerous and cannot be captured without danger to the persons attempting to effect a capture of the said animal. (*Ref. 28-1001, 28-1002 RS Neb.*)
- §6-204 **ANIMALS; ENCLOSURES.** All pens, cages, sheds, yards, or any other area or enclosure for the confinement of animals and fowls not specifically barred within the corporate limits shall be kept in a clean and orderly manner so as not to become a menace or nuisance to the neighborhood in which the said enclosure is located.
- §6-205 **FOWLS; RUNNING AT LARGE.** It shall be unlawful for any person to allow poultry, chickens, turkeys, geese, or any other fowls to run at large within the corporate limits, except in enclosed places on private property. (*Ref. 17-547 RS Neb.*)
- §6-206 **ANIMALS; PROHIBITED WITHIN THE CORPORATE LIMITS.** It shall be unlawful for the owner, keeper, or harbinger of any livestock, namely cows, horses, sheep,

goats, swine or mules, to keep such livestock within the corporate limits of the City of David City, Nebraska, except as provided herein. All properties, within the corporate limits, where any of the above listed livestock are being kept at the time of the passage of this ordinance, shall be permitted to continue to keep livestock. (Ord. No. 722, 7/11/90) (Amended by Ord. No. 726, 8/8/90)

## Article 3. Miscellaneous Misdemeanors

- §6-301 **MISDEMEANORS; IMPERSONATING AN OFFICER.** It shall be unlawful for any person other than a Municipal or State Police Officer to wear an official badge or

uniform, or to falsely and willfully impersonate the said officials. (Ref. 28-715.01 RS Neb.)

- §6-302 **MISDEMEANORS; RESISTING OFFICER.** It shall be unlawful for any person to resist any Municipal Officer when lawfully requested to do so by him. Any person who refuses to assist an officer when lawfully requested to do so shall be fined in any amount not exceeding fifty (\$50.00) dollars. (Ref. 28-729 RS Neb.)
- §6-303 **MISDEMEANORS; ABUSING OFFICER.** It shall be unlawful for any person to abuse a police officer or Municipal official in the execution of his office. (Ref. 28-729 RS Neb.)
- §6-304 **MISDEMEANORS; TRESPASSING.** It shall be unlawful for any person to trespass upon any private grounds within the Municipality, or to break, cut, or injure any tree, shrub, plant, flower, or grass growing thereon, or without the consent of the owner or occupant to enter upon an improved lot or grounds occupied for residence purposes and to loiter about the same. (Ref. 28-588, 28-588.01 RS Neb.)
- §6-305 **MISDEMEANORS; MALICIOUS DESTRUCTION OF PROPERTY.** It shall be unlawful for any person within the corporate limits to purposely, willfully, or maliciously injure in any manner, or destroy real or personal property of any description belonging to another. (Ref. 28-572, 28-573 RS Neb.)
- §6-306 **MISDEMEANORS; LARCENY.** It shall be unlawful for any person within the corporate limits to steal any money, goods, or chattels of any kind whatever. Any person who shall steal property of any kind, whether the same be entirely in money or entirely property of the value of three hundred (\$300.00) dollars shall be deemed to be guilty of a misdemeanor. (Ref. 28-512, 28-514 RS Neb.)
- §6-307 **MISDEMEANORS; INJURY TO TREES.** It shall be unlawful for any person to purposely or carelessly, and without lawful authority, cut down, carry away, injure, break down, or destroy the fruit of any trees planted or growing in the corporate limits. Any public service company desiring to trim or cut down any tree, except on property owned and controlled by them, shall make an application to the Governing Body to do so, and the written permit of the Governing Body in accordance with their decision to allow such an action shall constitute the only lawful authority on the part of the company to do so. (Ref. 28-519 RS Neb.)
- §6-308 **MISDEMEANORS; FIRE EQUIPMENT.** It shall be unlawful for any person who is not an active member of the Fire Department to deface, destroy, handle, or loiter about the equipment and property of the Fire Department.
- §6-309 **MISDEMEANORS; FIRE HOSE.** It shall be unlawful for any person, without the consent of the Fire Chief, or the Assistant Fire Chief to drive any vehicle over the unprotected hose of the Fire Department at any time.
- §6-310 **MISDEMEANORS; DRINKING IN PUBLIC.** It shall be unlawful for any person to consume alcoholic beverages in the public streets, alleys, roads, highways, or upon

any property owned by the Municipality or other governmental subdivision thereof, or inside vehicles while upon the public streets, alleys, roads, or highways, **except when said consumption is** in accordance with the provisions of the Nebraska Liquor Control Act and the licensing requirements of the State of Nebraska (*Ref. 53-186 RS Neb.*)

**§6-311 MISDEMEANORS; MINOR IN POSSESSION.**

Except as provided in Section 53-168.06, no minor may sell, dispense, consume, or have in his or her possession or physical control any alcoholic liquor in any tavern or in any other place, including public streets, alleys, roads, or highways, upon property owned by the State of Nebraska or any subdivision thereof, or inside any vehicle while in or on any other place, including, but not limited to, the public streets, alleys, roads, or highways, or upon property owned by the State of Nebraska or any subdivision thereof, except that a minor may consume, possess, or have physical control of alcoholic liquor in his or her permanent place of residence or on the premises of a place of religious worship on which premises alcoholic liquor is consumed as a part of a religious rite, ritual, or ceremony

The governing body shall have the power to, and may by applicable resolution or ordinance, regulate, suppress, and control the transportation, consumption, or knowing possession of or having under his or her control beer or other alcoholic liquor in or transported by any motor vehicle, by any person under twenty-one years of age, and may provide penalties for violations of such resolution or ordinance.

**§6-312 MISDEMEANORS; POSTED ADVERTISEMENTS.** It shall be unlawful for any person to wrongfully and maliciously tear, deface, remove, or cover up the posted advertisement or bill of any person, firm, or corporation when said bill or advertisement is rightfully and lawfully posted, and the same remains of value.

**§6-313 MISDEMEANORS; POSTING.** It shall be unlawful for any person to post, paste, or paint any sign, advertisement, or other writing of any nature upon a fence, pole, building, or other property without the written permission of the owner of the said property.

**§6-314 MISDEMEANORS; DISCHARGE OF FIREARMS.** It shall be unlawful for any person, except an officer of the law in the discharge of his official duty, to fire or discharge any gun, pistol, or other fowling piece within the Municipality; provided, nothing herein shall be construed to apply to officially sanctioned public celebrations if the persons so discharging firearms have written permission from the Governing Body. (*Ref. 17-556 RS Neb.*)

**§6-315 MISDEMEANORS; CONCEALED WEAPONS.** It shall be unlawful for any person or persons to carry about their person any concealed pistol, revolver, knife, billy club, sling-shot, metal knuckles, or other dangerous weapon of any kind. Nothing herein shall be construed to apply to the Municipal Police. (*Ref. 28-1001 RS Neb.*)

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

- §6-317 **MISDEMEANORS; FIRECRACKERS.** It shall be unlawful for any person to ignite or cause to be exploded fireworks or firecrackers of any description whatsoever, except sparklers, Vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charges for the purpose of making a noise, color wheels, lady fingers, not exceeding seven-eighths inch (  $\frac{7}{8}$  ") in length or one-eighth inch (  $\frac{1}{8}$  ") in diameter, and which do not contain more than one-half ( $\frac{1}{2}$ ) grain each in weight of explosive material. (Ref. 28-1003.07 RS Neb.)
- §6-318 **MISDEMEANORS; ASSAULTS.** It shall be unlawful for any person to assault or threaten any other person or persons. Any person who assaults another person or persons shall be deemed to be guilty of a misdemeanor. (Ref. 28-411 RS Neb.)
- §6-319 **MISDEMEANORS; PROVOKING ASSAULT.** It shall be unlawful for any person or persons within the Municipality to intentionally provoke or attempt to provoke an assault upon himself or another by the uttering of insulting words, cursing and swearing, or to use slander against any other person. Upon conviction a fine not to exceed ten dollars (\$10.00) shall be assessed. (Ref. 28-412 RS Neb.)
- §6-320 **MISDEMEANORS; MENACING THREATS.** It is hereby declared unlawful for any person within the corporate limits of this Municipality to assault or threaten another in a menacing manner or strike or injure another.
- §6-321 **MISDEMEANORS; ASSAULT AND BATTERY.** It shall be unlawful for any person to assault, threaten, strike, or injure any other person or persons. Any person who assaults or batters another person or persons shall be deemed to be guilty of a misdemeanor. (Ref. 28-411 RS Neb.)
- §6-322 **MISDEMEANORS; DISTURBING THE PEACE.** It shall be unlawful for any person or persons to assemble or gather within the Municipality with the intent to do an unlawful or disorderly act or acts, by force or violence against the Municipality, or resident therein, or who shall disturb the public peace, quiet, security, repose, or sense of morality. Any person or persons so assembled or gathered shall be deemed to be guilty of a misdemeanor. (Ref. 28-818 RS Neb.)
- §6-323 **MISDEMEANORS; DISORDERLY CONDUCT.** Any person who shall knowingly start a fight, fight, commit assault or battery, make unnecessary noise, or otherwise conduct themselves in such a way as to breach the peace shall be deemed to be guilty of a misdemeanor. (Ref. 17-129, 17-556 RS Neb.)
- §6-324 **MISDEMEANORS; LITTERING.** It shall be unlawful for any person to drop, or cause to be left, upon any municipal highway, street, or alley, except at places designated by the Governing Body, any rubbish, debris, grass, leaves, or waste, and any person so doing shall be guilty of littering. (Ref. 39-683 RS Neb.) (Amended by Ord. No. 735, 10/10/90)
- §6-325 **MISDEMEANORS; PROHIBITED FENCES.** It shall be unlawful for any person to erect, or cause to be erected, and maintain any barbed wire or electric fence within the corporate limits.

**§6-326** **MISDEMEANORS; APPLIANCES IN YARD.** (1) It shall be unlawful for any person to permit a refrigerator, icebox, freezer, stove, range, clothes washing machine, clothes dryer, dish washing machine, or any other dangerous appliance to be in the open and accessible to children whether on private or public property and possession of the same shall be deemed a nuisance.

(2) Upon the report being received by a City employee of a refrigerator, icebox, freezer or any other dangerous appliance being in the open and accessible to children, whether on private or public property, or, upon observation by a police officer of a refrigerator, icebox, freezer, stove, range, clothes washing machine, clothes dryer, dish washing machine, or any other dangerous appliance being in the open and accessible to children, whether on private or public property, the police Department shall serve notice to the owner of said refrigerator, icebox, freezer, or any other dangerous appliance to remove same within five (5) days. In the event that the refrigerator, icebox, freezer, stove, range, clothes washing machine, clothes dryer, dish washing machine, or other dangerous appliance is not removed within the five (5) days, the City will remove or cause to be removed said appliance(s) and assess the expense of the removal to the owner of said appliance(s). (Ref. 17-563, 18-1720 RS Neb.) (Amended by Ord. No. 781, 9/13/93)

**§6-327** **MISDEMEANORS; OBSTRUCTION OF PUBLIC.** It shall be unlawful for any person to erect, maintain, or suffer to remain on any street or public sidewalk a stand, wagon, display, or other obstruction inconvenient to, or inconsistent with, the public use of the same.

**§6-328** **MISDEMEANORS; OBSTRUCTING WATER FLOW.** It shall be unlawful for any person to stop or obstruct the passage of water in a street gutter, culvert, water pipe, or hydrant.

**§6-329** **MISDEMEANORS; REMOVING DIRT.** It is hereby declare unlawful for any person to remove, disturb, or take away from any street, alley, or public grounds any dirt, earth, stones, or other materials forming a part of such street, alley, or public grounds without first having obtained written permission to do so from the Governing Body.

**§6-330** **MISDEMEANORS; WEED REMOVAL.** It shall be the duty of every owner of real estate in the Municipality to cut and clear such real estate, together with one-half (½) of the streets and alleys abutting thereon, of all grass, weeds and worthless vegetation that are noxious, obstruct travel on public ways, or create a fire or health hazard. Such grass, weeds and worthless vegetation shall be cut so as not to extend more than twelve inches (12") above the ground. Subsequent to the cutting

of the said grass and weeds, all loose vegetation shall be immediately removed. Upon the failure of the owner, lessee, or occupant having control of any real estate to cut and clear the said grass, weeds and worthless vegetation as set forth hereinbefore, the Municipal Police shall serve notice on the said owner, lessee, or occupant to do so. In the event that the grass, weeds and vegetation have not been removed after a period of five (5) days, the Governing Body may order the same to be done under the direction of the Street Department, and the cost thereof shall be chargeable to the property owner. If the owner fails to reimburse the Municipality after being properly billed, the cost may be assessed against the real estate and the Governing Body shall have the assessment certified to the County Treasurer and the same shall be collected in the manner provided by law. In the event the property

owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (*Ref. 17-563.01, 18-1719 RS Neb.*) (*Mended by Ord. No. 721, 7/11/90*)

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

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

**§6-332** **MISDEMEANORS; UNLICENSED OR INOPERABLE VEHICLES.** No person in charge or control of any property within the Municipality, other than Municipal property, whether as owner, tenant, occupant, lessee, or otherwise, shall allow any

unlicensed, partially dismantled, wrecked, junked, inoperable or discarded vehicle to remain on property longer than seven (7) days; sixty (60) days for businesses; provided this section shall not apply to a vehicle in an enclosed building; a vehicle legally in transit; or to a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the Municipality. Licensed car dealers are exempt from licensing new or used vehicles being held for resale. Any vehicle allowed to remain on property in violation of this section shall constitute a nuisance and shall be abated, and any person violating this section shall be guilty of a misdemeanor. (*Ordinance No. 903, 4/11/01*)

#### Article 4. Penal Provisions

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

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

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

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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 \_\_\_\_\_ day of \_\_\_\_\_, 2004.

(Seal)

Passed on 2<sup>nd</sup> reading 10/13/04  
Mayor Stephen Smith

Passed on 2<sup>nd</sup> reading 10/13/04  
City Clerk Joan E. Kovar

The following letter was discussed:

***SACK LUMBER COMPANY***  
***PO Box 36***  
***Crete, NE 68333***

*September 14, 2004*

*Mayor Stephen Smith*  
*City of David City*  
*PO Box 191*

*David City Ne 68632*

*Dear Mayor:*

*We mailed our utility bill September 8th, which was due September 10<sup>th</sup>. September 11<sup>th</sup> we received a notice that it was not paid. I called Monday morning, September 13<sup>th</sup> and she said they had just received it that morning.*

*I talked with your City Clerk regarding the late fee charge and was informed to write a letter explaining what happened as she did not have the authority to remove the late fee.*

*Please consider removing the late fee as we have never been late with payment over the 40 years I have worked for Sack Lumber Co. THANK YOU for your consideration!*

*Sincerely,*

*SACK LUMBER COMPANY*

*Lorene Horky,  
Office Manager*

The Council discussed the fact that utility bills are mailed on approximately the 25<sup>th</sup> day of the month, become due the 1<sup>st</sup> of the following month, and become delinquent at 5:00 p.m. on the 10<sup>th</sup> of the month. The customer has 10 days grace period in which to pay the bill. If a customer waits until the 8<sup>th</sup> of the month to mail the payment, that is a risk they take.

Council member Kirby made a motion to waive the late fee charge for Sack Lumber Company. The motion died for lack of a second.

Council member Smith stated that he wanted the Council to remember this because in the past the late fee (penalty) was waived for customers with a larger usage. Smith stated it almost appeared as if the Council was discriminating against smaller customers. Some council members pointed out that there were extenuating circumstances in those instances. For instance, one envelope showed that it was mailed in David City, but sent to another state. The Council felt that was not the fault of the customer, but advised them also that it would not be waived again.

The following letter was discussed:

*David City Utilities  
557 4th St  
PO Box 191  
David City, NE 68632*

*To Whom it may concern,*

*Lincoln Information for the Elderly is renting Office Space, located at 370 5<sup>th</sup> St, David City, NE 68632. This space is being utilized by a LIFE Counselor and is for official business, on behalf of the LIFE office. LIFE is a Government Agency, with the City of Lincoln. We would appreciate your waiving the Service Deposit, of \$100.00, for this address. This billing will be paid monthly*

*by the City of Lincoln Treasurer.*

*Our Tax Exempt Number is 47-6006256.*

*If you have any questions regarding this request, or any billings for this address, please contact me directly.*

*Thank you for your consideration.*

*Sincerely,  
Lan Hoang, Account Supervisor (402) 441-6320  
Aging Services/LIFE  
1001 O St, Ste 101  
Lincoln., NE 68508*

Council member Schatz made a motion to maintain the service deposit requirement as is. Council member Kroesing seconded the motion. Voting YEA: Council members Smith, Hein, Lukassen, Kirby, Kroesing, and Schatz. Voting NAY: None. The motion carried. Aging Services/LIFE will be required to make a service deposit as this is a requirement of anyone moving to David City.

Granting non-exclusive franchises to Drew Hopwood d.b.a. Triple "S" Service; Jim Mally d.b.a. The Garbage Company; Tracy Zastrow / Waste Connections of Nebraska, Inc., d.b.a. The Garbage Company; Greg Cech d.b.a. U & I Sanitation, and Ruddy L. & Louis H. Svoboda d.b.a. Svoboda Refuse. City Clerk Kovar stated that Section 7 (a) of the Application Agreement stated "The current rate structure of Grantee is attached hereto as Exhibit A." Only one hauler had submitted their rates and it only listed the Residential Customer pickup rate. Also Section 7 (b) states "Rates shall not change until approval by the Council is granted." The Council discussed that since this is a non-exclusive franchise, the competition would regulate the rate structures. It will be researched to see what actually regulates this agreement. Therefore, Council member Kirby made a motion to table granting non-exclusive franchises to Drew Hopwood d.b.a. Triple "S" Service; Jim Mally d.b.a. The Garbage Company; Tracy Zastrow / Waste Connections of Nebraska, Inc., d.b.a. The Garbage Company; Greg Cech d.b.a. U & I Sanitation, and Ruddy L. & Louis H. Svoboda d.b.a. Svoboda Refuse. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

There being no further business to come before the Council, Council member Hein made a motion to adjourn. Council member Lukassen seconded the motion. Voting YEA: Council members Schatz, Kroesing, Smith, Kirby, Lukassen, and Hein. Voting NAY: None. The motion carried and Mayor Smith declared the meeting adjourned at 9:55 p.m..

Mayor Stephen Smith

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES  
October 13, 2004

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of October 13, 2004; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Joan E. Kovar