

CITY COUNCIL PROCEEDINGS

December 9, 2009

The City Council of the City of David City, Nebraska, met in open public session in the meeting room of the City Office, 557 N 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on December 3rd, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Dana Trowbridge, Council members Bill Yindrick, Mike Rogers, Gary Kroesing, Bill Scribner, Gary Smith, Nick Hein, and City Administrator Joe Johnson, City Attorney Jim Egr, and City Clerk-Treasurer Joan Kovar.

The meeting opened with the Pledge of Allegiance.

Mayor Trowbridge informed the public of the "Open Meetings Act" posted on the east wall of the meeting room and Resolution No. 2-2008 establishing rules and procedures for public participation at city council meetings.

Mayor Trowbridge opened the floor for nominations for the Council President. Council member Rogers nominated Council member Gary Kroesing. Council member Scribner nominated Council member Gary Smith. Ballots were distributed and tabulated by City Clerk Kovar. The results were: 4 votes for Council member Kroesing and 2 votes for Council member Smith. Council member Kroesing is the Council President for the upcoming year.

Citizen Jim Redler asked Mayor Trowbridge if he had forgotten something; that being "Petitions, Communications, and Citizens Concerns".

Mayor Trowbridge stated: "This is a non-agenda item. That item tends to get us to the brink of issues and problems as we continue moving forward. We have been told by our counsel Mr. Egr; we have been told by the counsel for the Nebraska League of Municipalities Mr. Gary Krumland; he has been in contact with Attorney General Howland on the issue, and it is something that none of them would like to see us continue doing because it brings items to an agenda that can't be brought to an agenda. We have six councilmen who can't smile, nod, do anything; give any indication that they agree with or are against whatever is being said because it is a non agenda item. We are going to pay attention to our legal counsel for a change and we are going to drop that because it doesn't bring us anything productive. It has brought us very less than productive during the last five months. It sets a tone for a meeting that is inappropriate for doing the business of the City of David City. We allow anybody in the audience to speak to any agenda item that we have. We are still on the "speak once", but everyone is allowed to speak on every agenda item that is appropriate for conversation. Some are some aren't; most are. So, I didn't forget anything, but thank you.

Mayor Trowbridge asked if anyone wished to serve on the Finance Committee. Council member Smith and Council member Rogers both volunteered to serve another year on the Finance Committee. Mayor Trowbridge stated that had both done a good job in the past and he

appreciated their willingness to continue serving. Council member Hein made a motion to appoint Council member Gary Smith and Council member Mike Rogers to serve on the Finance Committee. Council member Kroesing seconded the motion. Voting AYE: Council members Yindrick, Smith, Hein, Scribner, Rogers, and Kroesing. Voting NAY: None. The motion carried.

Nebraska Revised Statute 17-107 states: The mayor, with the consent of the council, may appoint such officers as shall be required by ordinance or otherwise required by law. Mayor Trowbridge presented and read the following list of appointed officials and police officers:

APPOINTED OFFICIALS

CODE SECTION	OFFICIAL TITLE	APPOINTEE
202	City Administrator	Joseph J. Johnson (resigned effective 12/18/09)
203 204	City Clerk +) City Treasurer)	Joan E. Kovar *
203.01	Deputy Clerk	Tami L. Comte
205	City Attorney	James M. Egr
	Special Prosecutor	Julie Reiter
206	City Physician	Victor J. Thoendel, M.D.
207	Chief of Police	
208	Police Officer (Sergeant)	James D. Sylvester, Interim Chief
	Police Officer	Marla Jo Schnell
210	Street Superintendent	James K. McDonald *
	Electric Supervisor	Pat Hoeft *
	Power Plant Supervisor	John J. Kabourek *
	Water Supervisor	Gary Janicek *
	Wastewater Supervisor	Scott Boyd *
211	Zoning Administrator	Roger Kotil
212	Park & Auditorium Supervisor	Bill Buntgen *

* Denotes Department Head

Council member Mike Rogers made a motion to approve the appointments of Department Heads and appointed officials as presented by Mayor Trowbridge. Council member Kroesing seconded the motion. Voting AYE: Council members Scribner, Smith, Hein, Yindrick, Kroesing, and Rogers. Voting NAY: None. The motion carried.

The minutes of the November 18th and November 24th, 2009 meetings of the Mayor and City Council were approved upon a motion by Council member Yindrick and seconded by Council member Hein. Voting AYE: Council members Smith, Scribner, Kroesing, Rogers, Hein, and Yindrick. Voting NAY: None. The motion carried.

Mayor Trowbridge asked for consideration of claims. Council member Smith made a motion to authorize the payment of claims. Council member Kroesing seconded the motion. Voting AYE: Council members Scribner, Hein, Rogers, Yindrick, Kroesing, and Smith. Voting NAY: None. The motion carried.

Mayor Trowbridge called for Committee and Officer Reports. Trowbridge stated that a Government Subcommittee meeting was held on December 1, 2009 and a Utility Subcommittee meeting on December 2, 2009. He was disappointed in the turn out from the public as it appears the public doesn't have much interest in the subcommittee meetings and he doesn't know why that is. He stated that two or three people attend religiously and he would encourage more participation in the subcommittee meetings. Council member Kroesing stated that the Mayor and Council have stressed several times that this is the place the public needs to come to express their views to them, so they know what to take to the council meeting. "Unless they express their views to us, we don't know". Kroesing said.

Council member Scribner thanked the Street Department for the hard work they put in during the last two days due to the snow storm. It was noted that not only the street department, but a lot of other people and departments did a lot of work and the Mayor and Council appreciated their hard work and extra hours.

Council member Kroesing made a motion to approve the Committee and Officer Reports as presented. Council member Rogers seconded the motion. Voting AYE: Council members Scribner, Smith, Yindrick, Hein, Kroesing, and Rogers. Voting NAY: None. The motion carried.

Mayor Smith presented Certificates of Appreciation to the following employees saying: "They are an interesting bunch, they work hard, they do a good job, and we should be proud of their efforts."

Scott Boyd

5 years

Scott was not present. Mayor Trowbridge stated: "Scott is certainly an interesting and a pleasant person to have around the City. He is very skilled with his wastewater talents and I really believe he likes and enjoys what he does. He studies it hard; he learns what he can; he wants to improve that system as we move forward. Lots of good things should be said for that, and to him we thank him for the five years of faithful service to the City of David City."

Glayda Scofield

20 years

Glayda was not present. Mayor Trowbridge stated: "Glayda Scofield has been the secretary of the Police Department for twenty years. Glayda gives us good efforts and we thank her for that."

Pat Hoeft

20 years

Pat was not present. Mayor Trowbridge stated: "Pat has been with us twenty years. Pat is the Superintendent of the Electric Utilities. He's the guy that when the tree branches break off and the power goes out, he's the one we first think of and sometimes that isn't always kindly. But he generally gets us back up and running within a relatively brief period of time. Gary (Kroesing) certainly can relate to what it takes to go out; you don't go out on nice quiet 70° evenings to do these things. Very seldom. If you see Pat, thank him for what he does. He and his crew keep the lights on."

Bob Palik

25 years

Bob Palik was present. Mayor Trowbridge stated: "Bob you're the old guy tonight, you're the twenty-five year. Twenty-five years is quite a threshold. Come on up here. Twenty-five years is something special. That is a long time with one organization. Has it always been with the power plant? Yes, well, you have seen a lot of changes in that power plant as time's gone on from the big old Worthington's to the new noisy Cats. This is a group that makes the City a fair amount of money through their work at the power plant. We come on line once a month for several hours in the winter time - and in the summer time sometimes much longer, and NPPD certainly appreciates what you guys do as well as the City and the revenue you bring us. Thank you again for twenty-five years of smiling good service."

Ordinance No. 1118 was introduced and passed on first reading at the November 18, 2009 council meeting, amending Zoning Ordinance No. 1060, Article 2, Definitions, Section 2.02.171 DWELLING, SINGLE FAMILY, Letter E, by adding "and all accessory buildings over 80 square feet" and deleting "or a ribbed metal material approved by the zoning administrator". Council member Scribner had asked that it only pass on first reading to allow the public time to react with feedback, concerns, or complaints.

Mayor Trowbridge opened the floor for discussion. One gentleman stated that he didn't really understand the difference between "ribbed roofing" and "metal roofing". Mayor Trowbridge stated that it would be the appearance. The approved metal roofing would look like shingles and it would be non-reflective because of the composition of a rough surface.

As the Council had not heard any feedback or complaints from the public, and Council member Scribner stated that he had given the public time, Council member Yindrick made a motion to suspend the statutory rule that requires an ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Hein, Scribner, Kroesing, Rogers, Smith, and Yindrick. Voting NAY: None. The motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1118 on the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Yindrick, Kroesing, Hein, Rogers, Smith, and Scribner. Voting NAY: None. The motion carried and Ordinance No. 1118 was passed and adopted as follows:

ORDINANCE NO. 1118

AN ORDINANCE AMENDING ZONING ORDINANCE NO. 1060 BY AMENDING ARTICLE 2, DEFINITIONS; SECTION 2.02.171 DWELLING, SINGLE FAMILY; 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. The Planning Commission met on October 24, 2009, and recommended that Article 2, Definitions, Section 2.02.171 DWELLING, SINGLE FAMILY, Letter E, be amended by adding "and all accessory buildings over 80 square feet" and deleting "or a ribbed metal material approved by the zoning administrator".

Section 2. That Section 2.02.171 DWELLING, SINGLE FAMILY, of the Zoning Ordinance No. 1060 be amended to read as follows:

2.02.171 DWELLING, SINGLE FAMILY a building having accommodations for or occupied exclusively by one family which meet all the following standards;

- A. The home shall have no less than 900 square feet of floor area, above grade, for single story construction.
- B. The home shall have no less than an 18 foot exterior width;
- C. The roof shall be pitched with a minimum vertical rise of two and one-half inches for each 12 inches of horizontal run;
- D. The exterior material shall be of a color, material and scale comparable with those existing in residential site-built, single family construction;
- E. The home and all accessory buildings over 80 square feet shall have a non-reflective roof material that is or simulates asphalt or wood shingles, tile, slate, or rock;
- F. The home shall be placed on a continuous permanent foundation and have wheels, axles, transporting lights, and removable towing apparatus removed;
- G. The home shall meet and maintain the same standards that are uniformly applied to all single-family dwellings in the zoning district; and
- H. Permanent foundation: continuous perimeter base on which building rests to be constructed from either poured concrete or laid masonry block or brick on a footing to be placed a minimum of 42 inches below the final ground level.

Section 3. That any ordinance or section of any ordinance passed and approved prior to or subsequent to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby repealed.

Section 4. This ordinance shall be published in pamphlet form and shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

PASSED AND APPROVED this 9th day of December, 2009

Mayor Dana Trowbridge

City Clerk Joan E. Kovar

Council member Kroesing introduced Ordinance No. 1119 amending Chapter 9 of the City of David City, Nebraska Municipal Code Book to include provisions of the International Property Maintenance Code.

Mayor Trowbridge stated: "The International Property Maintenance Code is used by a lot of communities throughout the country. The thing I like about it is the uniformity. It is a set of standards that is adopted Internationally as to building code and it is for existing buildings; it is not for new construction; it is for existing buildings only. There is a minimum standard that should be met for human beings to live in a facility, and there are times that we have owners and landlords that kind of turn a blind eye to those standards, and due to sets of circumstances that are beyond most control, and there are sad circumstances, some people are forced to live in those conditions, and I think that we owe it to our fellow man in the City of David City to try and make it so that doesn't happen in our community. There is a minimum level of healthy standards and those should be met and this gives us the opportunity to do that without working severe hardships on anybody who owns property." "We found in David City being a much smaller community than Wayne and having a lot less rental influence than Wayne, Nebraska has due to it's college town atmosphere, that it's hard to get people to sit on a Board of Health because they have to deal with some things that sometimes folks don't like what they need to do, and there are sometimes threatening type meetings, and the people that we don't pay a penny that do it out of the goodness of their heart really don't find a lot of value in doing those particular things. So the City Council being elected to do a lot of various things in the City would be the enforcement group of this particular process. So what we would need to do if we are going to move forward with it is there are three ordinances, this being the first, Joe tell us how that sequence goes and how it affects everything would you please."

Ordinance No. 1119 would include provisions of the International Property Maintenance Code; that just simply puts it in place. City Administrator Joe Johnson stated: "The next logical step would be to appoint a building inspector on an "as needed basis" for the sole purpose of inspecting the International Property Maintenance Code violations or to see if there are any violations. Not to inspect building codes on new or existing structures, not to inspect plumbing on new or existing structures, unless they are reported, not to inspect electrical, not to inspect thermal efficiency standards. The next logical step is to appoint somebody on an "as needed basis". Then the following step is to put this into motion, how do you get this thing to spark? So if there is a report of a violation, if somebody comes in and says "somebody is living in this house and we don't think it's appropriate for anybody to live in that house"; that would come to the City Council; the City Council can then employ the services "on an as needed basis" of a Building Inspector. That building inspector will go out and inspect that specific property and come back to this city council with a recommendation. Then it is up to this city council to do whatever it wants to do. Either you can say "you can go out there and fix it up" or this council can classify that as a nuisance. If the Council classifies this as a nuisance it starts the wheel of the nuisance abatement procedure up and going which is currently on our books. It is all about property maintenance. If a house is reported to us that it's in pretty poor condition or if one of us notice a house that is in pretty poor condition and we report it to ourselves then that will start the process. We are not going to be inspecting homes that are up for sale; we are not going to be

inspecting new homes; we are not getting into those arenas of inspections. This is only for maintenance.”

Yindrick stated that: “I think the presentations from the Chief of Police in Wayne speak highly; just speak volumes to the good that a process like this can do.”

Mayor Trowbridge stated: “He tells us in Wayne that it has not been a confrontational approach to rectifying perceived problems or identified problems and it could be as confrontational as the administrating body wants it to be. This council is not a confrontational council; they are more than willing to work with people that need to do what needs to be done. Some want to and some don’t. So I don’t see that it’s a threat.”

Council member Kroesing introduced Ordinance No. 1119 amending Chapter 9 of the City of David City, Nebraska, Municipal Code Book to include provisions of the International Property Maintenance Code. Council member Kroesing made a motion to pass it on the first reading only. Council member Yindrick seconded the motion. Voting AYE: Council members Smith, Kroesing, Hein, Rogers, and Yindrick. Voting NAY: Council member Scribner. The motion carried and Ordinance No. 1119 was passed on first reading only as follows:

ORDINANCE NO. 1119

AN ORDINANCE AMENDING CHAPTER 9 OF THE CITY OF DAVID CITY, NEBRASKA, MUNICIPAL CODE BOOK TO INCLUDE PROVISIONS OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE; 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 of the David City Municipal Code Book shall be amended to read:

Chapter 9

ZONING REGULATIONS

Article 1. Zoning Administrator

§9-101 **ZONING ADMINISTRATOR; POWER AND AUTHORITY.** The Zoning Administrator will work closely with and report to the City Council and the City Administrator. He/she will receive and review applications for zoning permits; interpret and enforce the General Plan and Zoning Ordinances; approve or deny zoning permit applications in compliance with ordinances and the General Plan; issue zoning permits and certificates of zoning inspections. Conduct inspections of property in conjunction with zoning permit applications and for compliance with ordinances and the General Plan. Conduct inspections of property resulting from complaints. Conduct follow up inspections of property for compliance, during the building process and upon completion, prior to issuance of a certificate of zoning compliance. Maintain records, subject to public inspection, of all zoning permit applications, complaints, investigations, inspections and any related activities. He/she will attend

all Planning Commission and Board of Zoning Adjustment Meetings, and be required to attend city council meetings as directed by the council. The Zoning Administrator will submit a monthly city department report to the city council listing permits issued or denied, applications to the Planning Commission or Board of Adjustment and related activities.

Article 2. Zoning / Moving Permits

§9-201 ZONING / MOVING PERMITS; LIMITATION. If the work described in any Zoning / Moving 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 / Moving 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 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.

§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.

§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. Property Maintenance Code

§9-701 **PROPERTY MAINTENANCE CODE; ADOPTED BY REFERENCE.** To provide certain minimum standards, provisions, and requirements for the control of buildings and structures and other physical things and conditions essential to ensure that structures are safe, sanitary, and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such structures. The International Property Maintenance Code, the most recent editions recommended by International Code Council, Inc. 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 Property Maintenance 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 Property Maintenance Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. (Ref. 17-1001, 18-132, 19-902, 19-922 RS Neb.)

§9-702 HISTORIC BUILDINGS. The provisions of this code shall not be mandatory for existing buildings or structures designated by the state or city as historic buildings or structures when such buildings or structures are judged by a code official to be safe and not dangerous to the public health, safety and welfare.

§9-703 DECLARATION OF NUISANCE. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of the Property Maintenance Code and such conflict with or violation of the provisions of the Property Maintenance Code is hereby declared to be a nuisance.

§9-704 ABATEMENT OF NUISANCE. The imposition of the penalties prescribed in the Property Maintenance Code shall not preclude the city from instituting appropriate actions to abate such conflict with or violation of the provisions of the Property Maintenance Code as prescribed in §4-402,

Article 8. Penal Provision

§9-801 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. That any ordinance or section of any ordinance passed and approved prior to or subsequent to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby appealed.

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

PASSED AND APPROVED this _____ day of _____, 20__.

Passed on 1st reading only 12/9/09
Mayor Dana Trowbridge

Passed on 1st reading only 12/9/09
City Clerk Joan E. Kovar

Council member Kroesing introduced Ordinance No. 1120 amending Chapter 1 of the City of David City, Nebraska, Municipal Code Book providing for a Special Building Inspector. Council member Kroesing made a motion to pass and adopt Ordinance No. 1120 on the first reading only. Council member Rogers seconded the motion. Voting AYE: Council members Smith, Hein, Yindrick, Rogers, and Kroesing. Voting NAY: Council member Scribner. The motion carried and Ordinance No. 1120 was passed on first reading only as follows:

ORDINANCE NO. 1120

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 2, OF THE CITY OF DAVID CITY, NEBRASKA, MUNICIPAL CODE BOOK PROVIDING FOR A SPECIAL BUILDING INSPECTOR; 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 1, Article 2, of the David City Municipal Code Book shall be amended to read:

Article 2. Appointed Officials

§1-201 APPOINTED OFFICIALS; GENERAL AUTHORITY.

- (A) The Mayor, by and with the consent of the City Council, may appoint a City Administrator, City Clerk, Deputy City Clerk, City Treasurer, City Attorney, City Physician, City Police Chief, City Fire Chief, City Street Commissioner, City Electric Supervisor, City Electric Plant Supervisor, City Water/Sewer Supervisor, City Zoning Administrator, City Engineer, City Park and Auditorium Superintendent, and a Special Building Inspector, who shall hold their offices for one (1) year. The Mayor, with the consent of the City Council, shall appoint such number of regular police officers as may be necessary. The City Council may establish and provide for the appointment of members of a law enforcement reserve force as provided by law. (*Neb. RS 17-107*)
- (B) All police officers and other appointed officials may be removed at any time by the Mayor. A police officer and all other appointed officials, including the chief of police, may appeal such removal or other disciplinary action to the city council. After a hearing, the city council may uphold, reverse, or modify the removal or disciplinary action. (*Neb. RS 17-107*)

§1-202 APPOINTED OFFICIALS; CITY ADMINISTRATOR ESTABLISHED. The office of Administrator of the City of David City, Nebraska is hereby established as provided by law. Such officer shall be appointed by the Mayor with the approval of a majority of the City Council and may be removed at any time by the Mayor with the approval of a majority of the City Council. The salary of the Administrator shall be fixed by resolution and shall be payable monthly.

§1-202.01 APPOINTED OFFICIALS: CITY ADMINISTRATOR; DUTIES AND RESPONSIBILITIES

The City Administrator shall be appointed by the Mayor, with the approval of a majority of the City Council.

The Administrator directs and supervises all departments of City government, and is responsible for the City's compliance with all statutes, codes, ordinances, and policies.

The Administrator works under legislative direction of the City Council and administrative direction of the Mayor. He/she is to be available to citizens and employees during normal business hours.

Administrative duties of the City Administrator include the following:

Attend all meetings of the City Council and report on matters concerning city affairs under his/her supervision and direction. Keep the Council informed regarding operations and problems and recommend solutions.

Direct the preparation of agendas and agenda packets for the Mayor, Council, and other persons requesting such information.

Attend meetings of departments and officials relevant to city affairs, or as directed by the Mayor and Council.

Evaluate all City business and projects and make recommendations to the Mayor and Council for the adoption of measures and ordinances deemed necessary for the good government of the City.

Continuously monitor and evaluate the efficiency and effectiveness of the City's organization structure, staffing patterns, service levels and administrative systems, and work with the Mayor and Council to implement necessary improvements.

Prepare and present periodic reports on the City's operation.

Initiate, prepare and present studies and research reports.

Supervise contracts and bids.

Maintain contact with State and Federal agencies in all matters regarding the City, analyze the City's position on State and Federal legislation which may impact the City, and communicate the city's position to appropriate individuals and committees of the State and Federal Government.

Obtain information concerning Federal and State funds available to the City. Identify qualifying need areas and implement necessary procedures to obtain such funds if so directed by the Mayor and Council.

Advise citizens, property owners, contractors, and others on questions relating to City code.

Attend authorized meetings and seminars that provide continuing education in matters relating to City administration.

II.

Financial duties of the City Administrator include the following:

Keep the Mayor and Council fully advised on the financial condition of the City.

Prepare annual estimates of revenues and expenditures and submit a proposed budget of a complete financial plan for the City to the Mayor and Council 30 days prior to the consideration and adoption of the annual budget by the Council.

Supervise authorized budget expenditures.

Present monthly reports to the Council regarding current budget and expenditures.

Evaluate all City revenues and make suggestions and recommendations on rates and prices charged for all City services.

Review all employee benefits and recommend changes as needed.
Prepare insurance specifications for the City and obtain bids.

Assist accountants with questions regarding the yearly audit.

Be responsible for long-range financial planning.

Investigate and report on alternate revenue sources for City projects.

III.

Duties of the City Administrator regarding **Personnel** include the following:

Plan, coordinate, and supervise personnel matters for all departments of the City.

Keep the City Personnel Handbook up-to-date and accurate according to changing laws and regulations.

Recommend to the Mayor and Council the appointment and dismissal of appointed personnel.

In coordination with appropriate department heads, is responsible for the appointment and dismissal of all subordinate employees in departments over which he/she exercises jurisdiction.

Provide for the transfer of workers between departments to meet varying workload emergencies.

Build good employee relations.

Hold periodic staff meetings with all department heads and employees.

Supervise the City's annual written employee evaluation process.

Conduct an annual review of the City's class specifications and compensation plan for all employees and recommend changes as needed.

IV.

Community Development duties of the City Administration include the following:

Oversee and assist in the development of long-range and short-range plans for the City, developing goals, objectives, and priorities. Keep department heads involved and informed concerning these plans.

Provide direction and assistance to citizens, community groups and, community promotional organizations to implement community development goals.

Serve as a liaison with outside agencies and organizations encouraging economic development.

V.

Public relations duties of the City Administrator include the following:

As chief public relations ambassador, the City Administrator is responsible to develop cooperative relationships with citizens, the media, and local business and community groups.

Receive, investigate, and act upon citizen complaints.

VI.

Qualification requirements for the position of City Administrator include the following:

Graduation from a four-year college/university with a bachelor's degree in public or business administration or related field. A Master's degree is desirable, but not required.

Ability to plan, organize, staff, direct, coordinate, and evaluate city programs.

Ability to communicate clearly and concisely.

Ability to perform related duties as assigned by the Mayor and City Council.

§1-203 **APPOINTED OFFICIALS; CITY CLERK.**

- (A) The City Clerk shall attend the meetings of the City Council and keep a correct journal of the proceedings of that body. He or she shall keep a record of all outstanding bonds against the city and when any bonds are sold, purchased, paid, or canceled, the record shall show the fact. He or she shall make, at the end of the fiscal year, a report of the business of the city transacted through his or her office for the year. That record shall describe particularly the bonds issued and sold

during the year, and the terms of the sale with each, and every item, and expense thereof. He or she shall file all official bonds after the same shall have been properly executed, and approved. He or she shall make the proper certificate of passage which shall be attached to original copies of all bond ordinances hereafter enacted by the City Council.

- (B) The City Clerk shall issue and sign all licenses, permits, and occupation tax receipts authorized by law and required by the city ordinances. He or she shall collect all occupation taxes and license money except where some other city officer is specifically charged with that duty. He or she shall keep a register of all licenses granted in the city and the purpose for which they have been issued.
- (C) The City Clerk shall permit no records, public papers, or other documents of the city kept and preserved in his or her office to be taken there from, except by such officers of the city as may be entitled to the use of the same, but only upon their leaving a receipt therefore. He or she shall keep all records of his or her office, including a record of all licenses issued by him or her in a blank book with a proper index. He or she shall include as part of his or her records all petitions under which the City Council shall order public work to be done at the expense of the property fronting thereon, together with references to all resolutions, and ordinances relating to the same. He or she shall endorse the date, and hour of filing upon every paper, or document so filed in his or her office. All such filings made by him or her shall be properly docketed. Included in his or her records shall be all standard codes, amendments thereto, and other documents incorporated by reference, and arranged in triplicate in a manner convenient for reference. He or she shall keep an accurate and complete account of the appropriation of the several funds, draw, sign, and attest all warrants ordered for the payment of money on the particular fund from which the same is payable. At the end of each month, he or she shall then make a report of the amounts appropriated to the various funds and the amount of the warrants drawn thereon. Nothing herein shall be construed to prevent any citizen, official, or other person from examining any public records at all reasonable times.
- (D) (1) The City Clerk shall deliver all warrants, ordinances, and resolutions under his or her charge to the Mayor for his or her signature. He or she shall also deliver to officers, employees, and committees all resolutions and communications which are directed at said officers, employees, or committees. With the seal of the city, he or she shall duly attest the Mayor's signature to all ordinances, deeds, and papers required to be attested to when ordered to do so by City Council.
- (2) Within 30 days after any meeting of the City Council, the City Clerk shall prepare and publish the official proceedings of the City Council in a legal newspaper of general circulation in the city, and which was duly designated as such by the City Council. This publication shall set forth a statement of the proceedings thereof and shall also include the amount of each claim allowed, the purpose of the claim, and the name of the claimant, except that the aggregate amount of all payroll claims may be included as 1 item. Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to those job titles shall be published. Each charge for this publication shall not exceed the rates provided by the statutes of the state, Neb. RS 23-122. (*Neb. RS 19-1102*)

- (3) The above-mentioned publication shall be charged against the general fund.
- (4) The City Clerk shall then keep a book with a proper index, copies of all notices required to be published or posted by the City Clerk by order of the City Council, or under the ordinances of the city. To each of the file copies of these notices shall be attached the printers affidavit of publication, if the notices are required to be published, or the City Clerk's certificate under seal where the same are required to be posted only. (*Neb. RS 19-1102*)
- (E) The City Clerk shall receive all objections to creation of paving districts, and other street improvements. He or she shall receive the claims of any person against the city, and in the event that the claim is disallowed in part, or in whole, the City Clerk shall notify such claimant, or his or her agent, or attorney, by letter within five (5) days after the disallowance, and the City Clerk shall then prepare transcripts on appeals of any disallowance of a claim in all proper cases.
- (F) The City Clerk may charge a reasonable fee for certified copies of any record in his or her office as set by resolution of the City Council. He or she shall destroy Municipal records under the direction of the State Records Board pursuant to Sections 84-1201 thru 84-1227; provided that the City Council shall not have the authority to destroy the minutes of the City Clerk, the permanent ordinances, and resolution books, or any other records classified as permanent by the State Records Board. (*Neb. RS 17-605*)

§1-203.01 **APPOINTED OFFICIALS; DEPUTY CITY CLERK.** The Deputy City Clerk shall assume the duties of the City Clerk in the City Clerk's absence.

§1-204 **CITY TREASURER.**

- (A) The City Treasurer shall be the custodian of all money belonging to the City. He or she shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. He or she shall give every person paying money into the treasury a receipt therefore, specifying the date of payment and on what account paid. He or she shall also file copies of such receipts with his or her monthly reports, and he or she shall, at the end of every month, and as often as may be required, render an account to the City Council, under oath, showing the state of the treasury at the date of such account and the balance of money in the treasury. He or she shall also accompany such accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with any and all vouchers held by him or her, shall be filed with his or her account in the City Clerk's office. If the treasurer fails to render his or her account within twenty days after the end of the month, or by a later date established by the governing body, the mayor in a city of the second class may use this failure as cause to remove the treasurer from office. The office shall be declared vacant, and the City Council shall fill the vacancy by appointment until the next election for municipal officers. (*Neb. RS 17-606*)
- (B) (1) All warrants upon the City Treasurer shall be paid in the order of their

presentation therefore and as otherwise provided in Neb. RS 77-2201 through 77-2215. (*Neb. RS 77-2201*)

- (2) The City Treasurer shall keep a warrant register in the form required by Neb. RS 77-2202.
 - (3) The City Treasurer shall make duplicate receipts for all sums which shall be paid into his or her office, which receipts shall show the source from which such funds are derived, and shall, by distinct lines and columns, show the amount received to the credit of each separate fund, and whether the same was paid in cash, in warrants, or otherwise. The Treasurer shall deliver one of the duplicates to the person making the payment and retain the other in his or her office. (*Neb. RS 77-2209*)
 - (4) The City Treasurer shall daily, as money is received, foot the several columns of the cash book and of the register, and carry the amounts forward, and at the close of each year, in case the amount of money received by the Treasurer is insufficient to pay the warrants registered, he or she shall close the account for that year in the register and shall carry forward the excess. (*Neb. RS 77-2210*)
- (C) (1) The City Treasurer shall prepare and publish annually within 60 days following the close of the municipal fiscal year a statement of the receipts and expenditures by funds of the City for the preceding fiscal year. (*Neb. RS 19-1101*)
- (2) Publication shall be made in one legal newspaper of general circulation in the City. If no legal newspaper is published in the City, then such publication shall be made in one legal newspaper published or of general circulation within the county in which the City is located. (*Neb. RS 19-1103*)
- (D) The City Treasurer shall keep all money belonging to the City separate and distinct from his or her own money. He or she shall invest and collect all money owned by or owed to the City as directed by the City Council. He or she shall maintain depository evidence that all municipal money is, in the name of the City, in a solvent and going financial institution of a type authorized by state law for deposit of municipal funds. He or she shall cancel all bonds, coupons, warrants, and other evidences of debt against the City, whenever paid by him or her, by writing or stamping on the face thereof, "Paid by the City Treasurer," with the date of payment written or stamped thereon. He or she shall collect all special taxes, allocate special assessments to the several owners, and obtain from the County Treasurer a monthly report as to the collection of delinquent taxes.

§1-205

APPOINTED OFFICIALS; CITY ATTORNEY. The City Attorney is the city's legal advisor, and as such he or she shall commence, prosecute, and defend all suits on behalf of the city. When requested by the City Council, he or she shall attend meetings of the City Council, and shall advise any city officials in all matters of law in which the interests of the city may be involved. He or she shall draft such ordinances, bonds, contracts, and other writings as may be required in the administration of the affairs of the city. He or she shall examine all bonds, contracts, and documents on which the City Council will be required to act, and attach thereto a brief statement in writing to all such instruments, and documents

as to whether or not the document is in legal and proper form. He or she shall prepare complaints, attend, and prosecute violations of the city ordinances when directed to do so by the City Council. Without direction, he or she shall appear and prosecute all cases for violation of the city ordinances that have been appealed to and are pending in any higher court. He or she shall also examine, when requested to do so by the City Council, the ordinance records and advise and assist the City Clerk as much as may be necessary to the end that each procedural step will be taken in the passage of each ordinance to ensure that they will be valid, and subsisting local laws in so far as their passage and approval are concerned. The City Council shall have the right to compensate the City Attorney for legal services on such terms as the City Council and The City Attorney may agree, and to employ any additional legal assistance as may be necessary out of the funds of the city. (*Neb. RS 17-610*)

§1-206 **APPOINTED OFFICIALS; CITY PHYSICIAN.** The City Physician shall be a member of the Board of Health of the city, and perform the duties devolving upon him or her as the medical advisor of the said board. In all injuries where a liability may be asserted against the city, the City Physician shall immediately investigate the said injuries, the extent thereof, and the circumstances. He or she shall then report the results of his investigation with the name of the party injured, and all other persons who may have personal knowledge of the matter. He or she shall make all physical examinations and necessary laboratory tests incident thereto, and issue such health certificates as are required by ordinance. For the purpose of making examinations of the sanitary conditions of the property, and the state of health of the inhabitants therein, he or she shall have the right at all reasonable hours to go upon, and enter all premises, buildings, or other structures in the city. He or she shall perform such other duties as may be required of him by the laws of the State of Nebraska, and the ordinances of the city. When ordered to do so by the City Council he shall disinfect, or fumigate the premises, or persons in or about the premises, when the premises are quarantined, and to call upon indigent sick persons, and perform other professional services at the direction of the City Council. The City Physician shall receive as compensation for his services such sum as the Governing Body may from time to time set. He or she shall receive no compensation for his or her services as a member of the Municipal Board of Health. (*Neb. RS 17-121*)

§1-207 **APPOINTED OFFICIALS; CITY POLICE CHIEF.** The City Police Chief shall direct the police work of the city and shall be responsible for the maintenance of law and order. He or she shall act as Health Inspector, Quarantine Officer and Secretary to the Board of Health. He or she is a working policeman and shall perform all the duties required of such policemen. He or she shall file the necessary complaints in cases arising out of violations of City Ordinances, and shall make all necessary reports required by the City Ordinances, or the laws of the State of Nebraska. (*Neb. RS 17-107, 17-121*)

§1-208 **APPOINTED OFFICIALS; CITY POLICE OFFICERS.** The City Police, whether regular, or special shall have the power to arrest all offenders against the laws of the State of Nebraska, or the city, by day or by night, and keep the said offenders in the city jail, or some other place to prevent their escape until trial can be held before the proper official of the State of Nebraska, or the city. They shall have full power, and authority to call on any person whenever necessary to assist them in

performing public duties, and failure, neglect, or refusal to render such assistance shall be deemed a misdemeanor punishable upon conviction by a fine. Every city police officer shall be expected to be conversant and knowledgeable with the city and state laws and no law enforcement official shall have any interest in any establishment having a liquor license. City police officers shall have the duty to file such complaints and reports as may be required by the city ordinances, and the laws of the State of Nebraska. Any city police officer who shall willfully fail, neglect, or refuse to make an arrest, or who purposely and willfully fails to make a complaint after an arrest is made shall be deemed guilty of a misdemeanor, and upon conviction shall be fined. It shall be unlawful for the City Council to retain any City Policeman in that position after he or she shall have been duly convicted of the willful violation of any law of the country, the state, or any ordinance of the city, except minor traffic violations. It shall be the duty of every city police officer making a lawful arrest to search all persons in the presence of some other person, whenever possible, and shall carefully keep, and produce to the proper judicial official upon the trial everything found upon the person of such prisoners. All personal effects so taken from prisoners mentioned above shall be restored to them upon their release. Suitable uniforms and badges shall be furnished to the city police by the city. Any member who shall lose or destroy the same shall be required to pay the replacement costs, and in the event that any member shall leave the force, he or she shall immediately deliver his badge to the Police Chief. The City Council may from time to time provide the city police with such uniforms, equipment, and transportation as may be essential in the performance of their official duties. (*Neb. RS 17-118, 17-124*)

§1-209 **APPOINTED OFFICIALS; CITY FIRE CHIEF.** The City Fire Chief shall be elected by the members of the Fire Department. He or she shall enforce all laws and ordinances covering the prevention of fires; the storage and use of explosives and flammable substances; the installation of fire alarm systems; the maintenance of fire extinguishing equipment; the regulation of fire escapes; and the inspection of all premises requiring adequate fire escapes. He or she shall within two (2) days investigate the cause, origin, and circumstances of fires arising within his or her jurisdiction. He or she shall, on or before the first (1st) day in April and October of each year, cause the secretary to file with the City Clerk, and the Clerk of the District Court a certified copy of the rolls of all members in good standing in their respective companies in order to obtain the exemptions provided by law. He or she shall have the power during the time of a fire, and for a period of thirty-six (36) hours thereafter to arrest any suspected arsonist, or any person for hindering the department=s efforts, conducting himself in a noisy and disorderly manner, or who shall refuse to obey any lawful order by the Fire Chief or Assistant Fire Chief. The Fire Chief or his assistant in charge of operations at a fire may command the services of any person present at any fire in extinguishing the same or in the removal, and protection of property. Failure to obey such an order shall be a misdemeanor punishable by a fine. The Fire Chief shall have the right to enter at all reasonable hours into buildings, and upon all premises within his jurisdiction for the purpose of examining the same for fire hazards, and related dangers. (*Neb. RS 17-147, 81-506*)

§1-210 **APPOINTED OFFICIALS; CITY STREET SUPERINTENDENT.** The City Street Superintendent shall have general charge, direction, and control of all work on the streets, sidewalks, culverts, and bridges of the city, and shall perform such other

duties as the council may require. It shall be his or her responsibility to see that gutters and drains therein function properly, and that the same are kept in good repair. He or she shall, at least once a year, make a detailed report to the City Council on the condition of the streets, sidewalks, culverts, alleys, and bridges of the city, and shall direct their attention to such improvements, repairs, extensions, and additions as he may believe are needed to maintain a satisfactory street system in the city along with an estimate of the cost thereof. He shall assume such other duties as the City Council may direct. (*Neb. RS 17-119*)

§1-211 **APPOINTED OFFICIALS; CITY ZONING ADMINISTRATOR.** The City Zoning Administrator shall perform all the duties specified in the Zoning and Sub-division regulations adopted by the Mayor and Council.

§1-212 **APPOINTED OFFICIALS; CITY PARK AND AUDITORIUM SUPERINTENDENT.** The City Park and Auditorium Superintendent shall be responsible for the management, care and use of the municipal auditorium and of the facilities in the park grounds except for the area used for the golf course and except for the swimming pool. He or she shall carry out his duties within the policies and guidelines set forth by the City Council and shall inform the Council of problems with regard to the operations that the city should address. He or she shall see to the renting of the facilities and make weekly reports to the City Treasurer concerning the amounts due and the parties owing the City. All funds collected by him or her shall be turned over to the Treasurer on a weekly basis together with a complete accounting thereof.

§1-213 **APPOINTED OFFICIALS; SPECIAL BUILDING INSPECTOR.** The governing body may employ a special building inspector to conduct specific building inspections in accordance with the Property Maintenance Code. The special building inspector shall make a record of his/her inspections and all other work completed on behalf of the city. All records of the special building inspector shall be public records, which shall belong to the city.

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

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

PASSED AND APPROVED this _____ day of _____, 20____.

Passed on 1st reading only 12/09/09
Mayor Dana Trowbridge

Passed on 1st reading only 12/09/09
City Clerk Joan E. Kovar

Council member Yindrick introduced Ordinance No. 1121 amending Chapter 4, Article 4, of the City of David City, Nebraska, Municipal Code Book providing for any building and

structure and other physical things and conditions that are in conflict with or in violation of any provisions of the Property Maintenance Code to be a nuisance, and the City Council of David City be an enforcement body regarding nuisance abatement. Council member Yindrick made a motion to pass and adopt Ordinance No. 1121 on the first reading only. Council member Hein seconded the motion. Voting AYE: Council members Smith, Kroesing, Hein, Rogers, and Yindrick. Voting NAY: Council member Scribner. The motion carried and Ordinance No. 1121 was passed on first reading only as follows:

ORDINANCE NO. 1121

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 4, OF THE CITY OF DAVID CITY, NEBRASKA, MUNICIPAL CODE BOOK; PROVIDING FOR ANY BUILDING AND STRUCTURE AND OTHER PHYSICAL THINGS AND CONDITIONS THAT ARE IN CONFLICT WITH OR IN VIOLATION OF ANY PROVISIONS OF THE PROPERTY MAINTENANCE CODE TO BE A NUISANCE; PROVIDING FOR THE CITY COUNCIL OF DAVID CITY TO BE AN ENFORCEMENT BODY REGARDING NUISANCE ABATEMENT; 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 4, Article 4, of the David City Municipal Code Book shall be amended to read:

Article 4. Nuisances

§4-401 NUISANCE DEFINITION, GENERAL AND SPECIFIC.

- (A) General Definition. A nuisance consists in doing any unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:
- (1) Injures or endangers the comfort, repose, health, or safety of others;
 - (2) Is offensive to the senses;
 - (3) Unlawfully interferes with, obstructs, tends to obstruct, or renders dangerous for passage any stream, public park, parkway, square, street, or highway in the city;
 - (4) In any way renders other persons insecure in life or the use of property; or
 - (5) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.
- (B) Specific Definition. The maintaining, using, placing, depositing, leaving, or permitting of any of the following specific acts, omissions, places, conditions, and things are hereby declared to be nuisances:
- (1) Any odorous, putrid, unsound, or unwholesome grain, meat, hides, skins, feathers, vegetable matter, or the whole or any part of any dead animal, fish,

or fowl;

- (2) Privies, vaults, cesspools, dumps, pits, or like places which are not securely protected from flies or rats, or which are foul or malodorous;
- (3) Filthy, littered, or trash-covered cellars, house-yards, barnyards, stable-yards, factory-yards, mill yards, vacant areas in rear of stores, granaries, vacant lots, houses, buildings, or premises;
- (4) Animal manure in any quantity which is not securely protected from flies and the elements, or which is kept or handled in violation of any ordinance of the city;
- (5) Liquid household waste, human excreta, garbage, butcher's trimmings and offal, parts of fish, or any waste vegetable or animal matter in any quantity, provided that nothing herein contained shall prevent the temporary retention of waste in receptacles in a manner provided by the health officer of the city, nor the dumping of non-putrefying waste in a place and manner approved by the health officer;
- (6) Tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire metal articles, bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster, and all trash or abandoned material, unless the same be kept in covered bins or galvanized iron receptacles;
- (7) Litter, accumulations of barrels, boxes, crates, packing crates, mattresses, bedding, excelsior, packing hay, straw or other packing material, lumber not neatly piled, scrap iron, tin or other metal not neatly piled, old automobiles or parts thereof, or any other waste materials; litter shall include, but not be limited to, the following:
 - a. Trash, rubbish, refuse, garbage, paper, rags, and ashes;
 - b. Wood, plaster, cement, brick, or stone building rubble;
 - c. Grass, leaves, and worthless vegetation;
 - d. Any machine or machines, vehicle or vehicles, or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk;
- (8) Any unsightly building, billboard, or other structure, or any old, abandoned or partially destroyed building or structure or any building or structure commenced and left unfinished; which said building, billboards or other structures are either a fire hazard, a menace to the public health or safety, or are so unsightly as to depreciate the value of property in the vicinity thereof;

- (9) All places used or maintained as junk yards, or dumping grounds, or for the wrecking and disassembling of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn-out, wrecked or abandoned automobiles, trucks, tractors, or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons;
- (10) Stagnant water permitted or maintained on any lot or piece of ground;
- (11) Stockyards, granaries, mills, pig pens, cattle pens, chicken pens or any other place, building, or enclosure, in which animals or fowls of any kind are confined or on which are stored tankage or any other animal or vegetable matter, or on which any animal or vegetable matter including grain is being processed, when the places in which the animals are confined, or the premises on which the vegetable or animal matter is located are maintained and kept in such a manner that foul and noxious odors are permitted to emanate therefrom;
- (12) Storage, accumulation, keeping, placing, or allowing to remain of trash, garage, scrap and wrecked, worn-out, broken or inoperative, or partially destroyed or disassembled personal or real property of any kind, including any motor vehicles, tractors, trailers, machinery, and equipment;
- (13) The storage, keeping or abandonment of parts, including scrap metals, from machinery, or parts thereof, except in enclosed buildings or garages or where otherwise authorized by the city zoning regulations.
- (14) The permitting of emission of smoke from any source that is polluted. The standards for air pollution established or adopted by the State of Nebraska shall be presumptive evidence as to when the air is deemed to be polluted under this section.
- (15) The obstruction or impeding without legal authority any river or collection of water or to corrupt and render unwholesome or impure any watercourse, stream, or other water within the corporate limits of the city. The standards for water quality established or adopted by the State of Nebraska shall be presumptive evidence as to when the water is deemed to be polluted under this section.
- (16) The abandoning, on public property, of personal property. For purposes of this subsection, "public property" shall mean any public right of way, street, highway, alley, park, or other state, county, or city owned property. For purposes of this subsection, "abandon" shall mean any personal property left on public property for more than 24 hours, except when the leaving of said personal property on said portion of public property, at that location, is legally permitted. For purposes of this subsection, "personal property" shall not include any motor vehicle for which a registration, from the State of Nebraska, is required to operate said motor vehicle on those portions of public property which constitute a street, highway, or alley.

- (17) **Any building and structure and other physical things and conditions that are in conflict with or in violation of any provision of the Property Maintenance Code.**
- (18) All other things specifically designated as nuisances elsewhere in this code.

§ 4-402 NUISANCES; ABATEMENT PROCEDURE.

- (A) Duty. It shall be the duty of every owner, occupant, lessee, trustee and/or mortgagee of real estate in the city to keep such real estate free of public nuisances. All, or any part of said premises found, as provided herein, to constitute a public nuisance shall be abated by rehabilitation, demolition, or repair pursuant to procedures set forth herein.
- (B) Nonexclusive Procedure. The procedure set forth in this subchapter for abatement of a nuisance is nonexclusive and is in addition to the procedure for abatement of litter.
- (C) Enforcement. When the City Council or Board of Health of the City of David City, Nebraska declares or finds that any premises within the jurisdiction for nuisances contained in Section 4-403 of this Code may be maintained contrary to one or more of the provisions of Section 4-401 of the Code, EXCEPT subsection (16) thereof, the City Administrator of the City shall mail a Notice to the owner, occupant, lessee, mortgagee, and/or trustee of the premises. The Notice shall state the conditions which constitute the public nuisance and shall order the abatement of the nuisance within the time period set forth in the Notice, and shall be substantially in the following form:

NOTICE OF NUISANCE

TO: (Owner, Occupant, Lessee, Mortgagee, Trustee)
Addresses)

- (1) Conditions Which Constitute the Public Nuisance:
(State all applicable conditions from Section 4-401)
- (2) Abatement of the Nuisance Outlined Above SHALL be Completed on or Before: (State day, date, and time)

City Administrator
City of David City, Nebraska

- (D) Form of Proper Service of Notice. Service of said Notice shall be by depositing a copy of said Notice in the United States Postal Service enclosed in a sealed envelope and with postage thereon fully prepaid. Said mail shall be registered or certified and addressed to said owner, occupant, lessee, mortgagee, and/or Trustee at the last known address of said parties as disclosed by the current tax rolls, and if there is no known address, then in care of the property address. Service is complete at the time of such deposit. "Owner" as used herein shall

mean any person in possession and also any person having or claiming to have any legal or equitable interest in said premises. The failure of any person to receive such Notice shall not affect the validity of the proceedings hereunder.

- (E) Affect of Failure to Abate. If the nuisance is not abated within the period given in the Notice, the City Administrator of the City may determine to proceed to abate the nuisance pursuant to the provisions of this Code.

- (F) Hearing. If the owner, as defined aforesaid, of the premises upon which the City Administrator of the City has determined that there exists a nuisance, shall, within the time period given to the owner by the City Administrator of the City for the abatement of said nuisance, file a written notice with the City Clerk for a hearing before the City Council concerning such determination, the City Clerk shall fix a date and time to hear the matter. The written Notice shall include the name and address, including mailing address, of the owner. The City Clerk shall then issue a Notice of the hearing date and time by mailing a copy to the petitioner's address no later ten (10) days prior to the date of the hearing.

At the time fixed in the Notice, the City Council, shall hear the testimony of all competent persons desiring to testify respecting the condition constituting the nuisance, including the estimated cost of abatement and other matters which may be pertinent. At the conclusion of the hearing, the City Council shall, by resolution, declare its findings. If the City Council so concludes, it may declare the condition existing to be a nuisance and direct the City Administrator to proceed to abate the nuisance pursuant to the provisions of this Code. Such final determination shall be considered a final order of the City. Said Notice shall be substantially in the following form:

NOTICE OF ADOPTION OF RESOLUTION NO. _____

TO: _____

YOU ARE HEREBY NOTIFIED THAT ON _____, 20____, the City of David City, Nebraska, by Resolution No. _____, after notice and hearing as specified in said Resolution, did determine that the following constitute a public nuisance, to-wit:

Upon the following described real estate, to-wit: _____

You are granted _____ days from the date of this Notice to abate said nuisance. Failure to abate said nuisance shall result in said nuisance being abated by the City of David City, Nebraska, and the cost of abatement shall be assessed upon said premises and constitute a lien upon said premises until paid.

Dated: _____

CITY OF DAVID CITY, NEBRASKA

By: _____

City Clerk

- (G) Extension of Time. The City Administrator may grant an extension of time to abate the nuisance if, in the City Administrator's opinion, good cause for an extension exists.
- (H) Abatement by City. If the person fails to abate the nuisance within the time set forth, the City Administrator may order the abatement of the nuisance.
- (I) Record of Expenses. The City Clerk shall keep an itemized account of the expenses involved in abating the nuisance. The City Clerk shall post conspicuously on the property and shall also mail to the owner of the property a statement showing the expenses of the abatement, together with a Notice of the time and place when the statement will be submitted to the City Council for approval and confirmation and at which time the City Council may consider the objections and protests to the cost of the work. Said notice shall be substantially in the following form:

NOTICE OF HEARING ON EXPENSE
OF ABATEMENT OF NUISANCE

TO: _____

Pursuant to Section 4-402(I) of the Municipal Code of the City of David City, Nebraska, you are hereby notified that the following is a statement showing the expense incurred by the City of David City in abating a nuisance upon the following described real estate, to wit:

Said expenses are as follows:

You are further notified that said Statement of Expenses shall be submitted to the City Council for consideration on the ____ day of _____, 20____, at _____ o'clock _____M., David City, Nebraska, at which time you may appear to object or protest the expenses incurred in the abatement of said nuisance.

CITY OF DAVID CITY, NEBRASKA

By: _____
City Clerk

- (J) Hearing on Statement of Expenses. At the time fixed for hearing on the statement of expense, the City Council shall consider the statement and protest or objections raised by the persons liable to be assessed for the costs of the abatement. The City Council may revise, correct, or modify the statement as it considers just and thereafter shall confirm the statement by motion or resolution. The decision of the City Council on all protests and objections which may be and shall be final and conclusive. The procedure governing the hearing shall be provided by Section 4-402(F).
- (K) Expenses as a Special Assessment Against the Property- If the property owner

does not pay the expense of abating the nuisance within five (5) days after the City Council confirms the cost of abatement, the costs shall become a special assessment against the real estate upon which the nuisance was abated. The assessment shall continue until it is paid, together with interest applicable per statutes of the State of Nebraska.

- (L) Notice of Special Assessment. The City shall file in the offices of the County Clerk and County Treasurer of Butler County, Nebraska a certificate substantially in the following form:

NOTICE OF SPECIAL ASSESSMENT

Under the authority of the David City Municipal Code, the City did on _____, 20_____, abate a nuisance upon the real estate hereinafter described and then on _____, 20_____, did assess the cost of the abatement upon the real estate. The City of David City claims a special assessment on the real estate for the expense of doing the work in the amount of \$_____. This amount is a special assessment against the real estate until it is paid, with interest as set by the applicable statutes of the State of Nebraska, until discharged of record. The real estate referred to above, and upon which the special assessment is claimed is that certain parcel of land situated within the jurisdiction of the City of David City, County of Butler, State of Nebraska and _____ more particularly described as follows:

DATED: _____

CITY OF DAVID CITY, NEBRASKA

By: _____
City Clerk

- (M) Alternatives. Nothing in the foregoing sections shall be deemed to prevent the City Administrator from directing the City Attorney to commence a civil and/or criminal proceeding to abate a public nuisance under applicable civil or penal code provisions as an alternative to the proceedings set forth herein.
- (N) Procedure in Case of Emergency. When the conditions which constitute the nuisance pose an immediate threat to the public peace, health, or safety, the City Administrator may order the nuisance abated immediately.
- (O) Expenses Collected by Civil Action. If the property owner does not pay the expense of abating the nuisance within five (5) days after the City Council confirms the cost of abatement, the City may collect the costs associated with said abatement from the property owner and enforce the collection by civil action of any court of competent jurisdiction. (Ordinance No. 1050 6-13-07)

§4-403 **NUISANCES; JURISDICTION.** The Mayor and Chief of Police of the Municipality are directed to enforce this Municipal Code against all nuisances. The jurisdiction of the Mayor, Chief of Police, and court shall extend to, and the territorial application of this Chapter shall include, all territory adjacent to the limits of the Municipality within two (2) miles thereof and all territory within the corporate limits. (Ref. 18-1720 RS Neb.)

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

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

PASSED AND APPROVED this _____ day of _____, 20__.

Passed on 1st reading only 12/09/09
Mayor Dana Trowbridge

Passed on 1st reading only 12/09/09
City Clerk Joan E. Kovar

Mayor Trowbridge asked for discussion concerning making it unlawful for any person to discharge an arrow, bolt, broad head and any other projectile weapon or devise within the corporate limits.

A citizen questioned if a nail gun would be considered a projectile weapon. City Attorney Egr stated that under the normal definitions you see, a nail gun would not come under the definition of a weapon. It is not classified as a weapon it is considered a carpentry tool.

Lance Napier stated: "My wife, myself, and my three kids have been in the sport of archery, forever. They start shooting at 4, 5 years old. It is a sport; it's an Olympic sport. There are actually scholarships for college aged students in the state of Nebraska for archery. I am not familiar with this stuff but I would hope that one or two complaints wouldn't drive someone to make an ordinance every time somebody makes a complaint in this town. There is a program called the National Archery in School Program. 20,000 high school kids were in it this year alone. Scholarships are involved in that as well; there are tournaments; they actually do this in gyms of high schools throughout the state of Nebraska; actually every state is a part of that program. I talked to the Game & Parks today about the situation. I feel it is not an unsafe sport, no more unsafe than being out on the golf course, being at a base ball game, getting an errant fly ball on the side of the head at a baseball game, you can't make people not go to a baseball game. It is also an issue of the Scouts. To become an Eagle Scout you must be tested as a proficient archer. Whether I have a place to go out of town and shoot is not my concern, my concern is my kids and future youth that this would be taken away from. That they would have no where to practice in town. They would have to find a place to practice to even become an Eagle Scout.

Mayor Trowbridge stated: "Lance, I guess I need to ask you why do you feel it would have to be in town? There is a place ten miles away and I don't know if young people don't travel ten miles from home anymore? We're mixing an apple and an orange here as we are discussing this because I will agree with you this is the safest high school sport; it is the safest intercollegiate sport that is offered when you go to injuries per year per participant. This is in the basement because of one thing and that is the guidance and the structure of the program. There is no guidance and there is no structure in the back yard. The structure I have in front of me setting up a target archery range asks for 50 - 70 yards of clear space behind the target. 50 yards is 150 feet. People generally don't have that size lot. The backstops generally are requested to be 10x16 if you do some homework on that. They are generally suggested to be of a specific material that entraps an arrow. So I will agree with you, I think in David City if people wish to go to that expense of putting up a proper range in their backyard it could be encouraged."

Lance Napier stated: "Schools could not be a part of the NASP program because the schools are in the city limits and it doesn't say anything about indoor or outdoor ranges, it just says you can't discharge a projectile weapon within the corporate limits. Just think what you are taking away from the youth and it is a lot to people who are passionate about it."

After further discussion, Council member Scribner made a motion to table consideration of making it unlawful for any person to discharge an arrow, bolt, broadhead and any other projectile weapon or device within the corporate limits. Council member Hein seconded the motion. Voting AYE: Council members Yindrick, Smith, Kroesing, Rogers, Hein, and Scribner. Voting NAY: None. The motion carried.

ORDINANCE NO. 1122

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 4, OF THE CITY OF DAVID CITY, NEBRASKA, MUNICIPAL CODE BOOK TO MAKE IT UNLAWFUL FOR ANY PERSON TO DISCHARGE AN ARROW, BOLT, BROADHEAD AND/OR ANY OTHER PROJECTILE WEAPONS OR DEVICE WITHIN THE CORPORATE LIMITS; 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, Article 4, of the David City Municipal Code Book shall be amended to read:

Article 4. Miscellaneous Misdemeanors

§6-401 **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. 28-608, 28-609, 28-610 RS Neb.*)

§6-402 **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. 28-904 to 28-906 RS Neb.*)

- §6-403 **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. 28-929, 28-931, 28-931.01 RS Neb.)
- §6-404 **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. 28-550 to 28-522 RS Neb.)
- §6-405 **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. 28-519 RS Neb.)
- §6-406 **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 two hundred (\$200.00) dollars or less shall be deemed to be guilty of a misdemeanor. (Ref. 28-512, 28-514 RS Neb.)
- §6-407 **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.
- §6-408 **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.
- §6-409 **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.
- §6-410 **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, 53-186.01 RS Neb.)
- §6-411 **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.

- §6-412 **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.
- §6-413 **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.
- §6-414 **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, 28-1239.01, 28-1252 RS Neb.)
- §6-415 **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. 28-1202, 28-1204 RS Neb.)
- §6-416 **MISDEMEANORS; SLINGSHOTS, AIR GUNS, BB GUNS, ARROW, BOLT, BROADHEAD & ANY OTHER PROJECTILE WEAPONS OR DEVICES.** It shall be unlawful for any person to discharge a slingshot, air gun, BB gun, paint ball gun, arrow, bolt, broadhead and any other projectile weapons or devices at any time or under any circumstances within Corporate Limits of the Municipality.
- §6-417 **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 (7/8") in length or one-eighth inch (1/8") in diameter, and which do not contain more than one-half (1/2) grain each in weight of explosive material. (Ref. 28-1242 to 28-1250 RS Neb.)
- §6-418 **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.
- §6-419 **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.
- §6-420 **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.

- §6-421 **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. 28-309, 28-310, 28-393 RS Neb.)
- §6-422 **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. 28-1322, 55-474 RS Neb.)
- §6-423 **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.)
- §6-424 **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, 28-523 RS Neb.)
- §6-425 **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.
- §6-426 **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.)
- §6-427 **MISDEMEANORS; OBSTRUCTION OF PUBLIC.** It shall be unlawful for any person to erect, maintain, park, or suffer to remain on any street, alley, or public sidewalk a stand, wagon, display, or other obstruction inconvenient to, or inconsistent with, the public use of the same.
- §6-428 **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.
- §6-429 **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.

§6-430 MISDEMEANORS; WEED REMOVAL.

- (1) It shall be a nuisance to permit or maintain any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation. It shall be the duty of each owner or owner's duly authorized agent or occupant 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 weeds, grasses or worthless vegetation that are noxious, obstruct travel on public ways, or create a fire or health hazard. Such weeds, grasses and worthless vegetation shall be cut so as not to extend more than twelve inches (12") in height above the ground. Subsequent to the cutting of the said weeds, grasses and worthless vegetation, all loose vegetation shall be immediately removed. Upon the failure of the owner or owner's duly authorized agent or occupant having control of any real estate to cut and clear the said weeds, grasses and worthless vegetation as set forth hereinbefore, the Municipal Police shall give notice to abate and remove such nuisance to each owner or owner's duly authorized agent or occupant, if any, by personal service or certified mail. If notice by personal service or certified mail is unsuccessful after three (3) days, notice shall be given by publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. In the event that the weeds, grasses, and vegetation have not been removed after a period of five (5) days from personal service or certified mail or after a period of five (5) days from publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the lot or ground, the City Administrator shall have the nuisance abated and removed by directing the Street Department to have such work done, and the cost thereof shall be paid by the owner. (Ref. 17-563 RS Neb.)
- (2) The cost and expenses of any such work shall be paid by the property owner. If unpaid for two months after such work is done, the Municipality may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground. (Ref. 17-563 RS Neb.)
- (3) If, within the same calendar year, the city has, pursuant to subsection (1) of this section, acted to remove grass, weeds or worthless vegetation exceeding twelve (12) inches in height on the same lot or piece of ground, it shall be declared a nuisance to permit or maintain any growth of eight (8) inches or more in height of grass, weeds or worthless vegetation. (Ref. 17-563 RS Neb.) (Ordinance No. 1109 8-12-09)

§6-431 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 from 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.)

§6-432 MISDEMEANORS; UNLICENSED OR INOPERABLE VEHICLES. It shall be unlawful for any 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.

§6-433 MISDEMEANORS; DISCHARGING PROJECTILES. It shall be unlawful for any person to discharge or release any instrument which propels a projectile across or into any public place or in the private property of another person.

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

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

PASSED AND APPROVED this _____ day of _____, 20____.

Tabled 12/09/09

Mayor Dana Trowbridge

Tabled 12/09/09

City Clerk Joan E. Kovar

Council member Smith made a motion to approve application #1DEC-2009 for a David City Economic Development Reuse Loan in the amount of \$5,000.00. Council member Hein seconded the motion. Voting AYE: Council members Kroesing, Rogers, Scribner, Yindrick, Hein, and Smith. Voting NAY: None. The motion carried.

Mayor Trowbridge stated that the city has an option to purchase real property legally described as NE ¼ NW ¼ of Cedar Lawn Addition to the City of David City, Nebraska, and

located at 315 South 4th Street, David City, Nebraska. The \$2,500 would be applied to the purchase price of \$25,000. This property may possibly be used for the establishment of the City Office/Police Department building. The city has till the end of March to determine if they want to actually purchase the property. If we don't transact business by March 31, 2010, we lose our \$2,500. We have almost 120 days to do our due diligence and figure out what potential problems we could have with buried tanks before we purchase this property. If we would purchase it, and don't use it, we would still have highway frontage property that we could sell.

Council member Scribner made a motion to approve an "Option to Purchase" in the amount of \$2,500 (Two Thousand Five Hundred Dollars) for the real property legally described as NE ¼ NW ¼ of Cedar Lawn Addition to the City of David City, Nebraska, and located at 315 South 4th Street, David City, Nebraska. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Hein, Rogers, Yindrick, Smith, and Scribner. Voting NAY: None. The motion carried.

Mayor Trowbridge stated that he and City Administrator Joe Johnson have served on the Butler County Development Board for some time. Joe Johnson will be leaving December 18th so there will be a vacancy on the Board. Council member Bill Scribner volunteered to serve on the Butler County Development Board which meets on the 2nd Tuesday of every month at 7:00 p.m.

The city requested proposals for qualified AMI or AMR meter reading technology. Four (4) proposals were received from the following firms: Dutton-Lainson Company - Vehicle Drive-By System; Eka Systems - Water meter had an eight year life and cost of replacement is \$117.00 per meter; HD Supply Waterworks - System could only work with Sensus Meters (lack of meter competition) and no remote disconnect and reconnect; Elster Electricity, LLC. The cost for deployment was in the ballpark of \$400,000, except for Dutton-Lainson Company's cost of \$158,100. City Administrator Joe Johnson recommended Elster Electricity, LLC as the City's partner in the department of AMI or AMR meter reading technology. City Administrator Johnson stated: "Last year we budgeted \$250,000 for capital improvement expenditures to put this in. We were going to start by just deploying the meters; start putting the meters out everywhere and anywhere, but we didn't use that \$250,000; that \$250,000 went into our reserves. This year we budgeted another \$200,000, so a total of \$450,000 can be used for the deployment of this service. We will install the electric and water meters in-house; that will save us roughly \$100,000 from the company coming in and doing that."

Mayor Trowbridge asked if everyone was on the same page, electric and water departments, and if everyone was comfortable with this. City Administrator Johnson stated they are.

Council member Kroesing made a motion to select Elster Electricity, LLC to provide the technology for a remote electric and water meter reading system. Council member Smith seconded the motion. Mayor Trowbridge stated: "so we are not electing to spend the money tonight?" City Administrator Johnson said "absolutely not. Elster will come back with a formal contract for approval at a later date." Voting AYE: Council members Yindrick, Hein, Rogers, Scribner, Smith, and Kroesing. Voting NAY: None. The motion carried.

Mayor Trowbridge stated: "Joe Johnson as you all know is resigning. We have spent a lot of time together. I have come to admire his work ethic. It has been a pleasure. I thank him

for all of the directions that he has taken us that we haven't gone before. I feel badly that we won't have him for another four or five years to take us to some more interesting directions and move this community ahead. It will be our challenge to replace him and it will be my suggestion that we do replace him. We'll see how we do, I hope we do as well as the group before me did when they found Joe Johnson. So Joe it is with great regret that I accept your letter of resignation. The bright side to this is he is a bright young man, he has done what he needs to do, he is moving to probably what would be the job of a lifetime for Joe Johnson. South Sioux City is home. Lance Hedquist is the City Administrator of South Sioux. Lance has done his entire term of duty which is 30+ years as City Administrator of South Sioux City, Nebraska. They have advanced light years through his leadership. He has stayed the course and they love him. He is about my age so he has probably four or five more years and he is going to be retiring and when Joe said he was going to interview with them, I said they are picking Lance's replacement they're not picking an assistant. Lance's son is Joe's best friend. This is kind of a deal made in heaven for him. We wish you well. We thank you for everything you have done above and beyond the call. You have all of our respect so thank you Joe.

Council member Hein made a motion to accept the resignation of City Administrator Joe Johnson, with great regret. Council member Yindrick seconded the motion, also with regret. Voting AYE: Council members Rogers, Scribner, Smith, Kroesing, Yindrick, and Hein. Voting NAY: None. The motion carried.

City Administrator Johnson stated: "The contract amendment #2 for Olsson Associates is for \$36,950 and we will save more than that on construction material. We haven't used as much cement, backfill, or labor as estimated. We need eight (8) more weeks of engineering services due to Castle Construction dragging their feet on the project. The 15th is final complete day, that means that the project needs to be complete; everything done, everything buttoned up; that is not going to happen. We will probably be the end of January for the conclusion of this and that's the additional eight (8) weeks of construction engineering that we need and I wanted Olsson Associates to look after the municipal blocks construction so that's the \$9,000 for them doing a little oversight of the municipal blocks construction. We bonded out almost 1.5 million dollars to complete this project and the fourteen residential streets that we are doing now. I am waiting to have all of the bills come in to see where we stand, what's left of that 1.5 million, then we will go back next spring and do more of the municipal streets with the left over funding. If there was something that was unforeseen we have the money to cover those unforeseen expenses; that's why we are not completing the full reconstruction at this point and that's important because the tax dollars we are saving we are being stewards of those tax dollars. The penalty will start kicking in on the 16th (sixteenth). That will probably be something that this city council has to deal with probably in January. We will probably have to negotiate in closed session with those people, or in closed session to figure out what exactly we will be charging for not completing the work on time. Weather can be a negotiation point because there were a couple days where it rained, it was muddy and they couldn't get out there, obviously there is a foot of snow on the ground right now so it will be hard to do anything; that all comes into effect. That could push the 15th back to whatever this council decides, the council could decide to give them an extra two weeks or whatever. Those are things that need to be discussed. Castle has done a good job, they have been slow but I don't know if that's because they are so detailed that they are doing it to make sure things are done correctly or if they are just dragging their feet. They had a large task. I didn't think we'd get the fourteen residential streets constructed, but we did."

Council member Yindrick made a motion to approve Contract Amendment #2 for Olsson Associates Professional Service for "D" Street paving and storm water outlet improvements and additional municipal blocks. Council member Hein seconded the motion. Voting AYE: Council members Scribner, Smith, Rogers, Kroesing, Hein, and Yindrick. Voting NAY: None. The motion carried.

Council member Hein made a motion to go into executive session to discuss agenda items #22, #23, and #24, those being 1) strategy and pending litigation with respect to electric service area boundaries 2) strategy with respect to contract negotiations with engineering firm regarding a new municipal building, and 3) deployment of public safety / law enforcement personnel. Council member Rogers seconded the motion. Voting AYE: Council members Scribner, Smith, Kroesing, Yindrick, Rogers, and Hein. Voting NAY: None. The motion carried.

Mayor Trowbridge stated: "Now we are going into executive session at 8:38 p.m. to discuss 1) strategy and pending litigation with respect to electric service area boundaries 2) strategy with respect to contract negotiations with engineering firm regarding a new municipal building, and 3) deployment of public safety / law enforcement personnel."

Mayor Trowbridge, Council members Kroesing, Yindrick, Smith, Scribner, Hein, and Rogers, City Administrator Joe Johnson, City Attorney Jim Egr, Interim Police Chief Jim Sylvester, and City Clerk Kovar went into executive session at 8:38 p.m.

Council member Yindrick excused himself from executive session at 10:00 p.m.

City Attorney Jim Egr stated that a motion and second was not needed to come out of executive session. Therefore, Mayor Trowbridge declared the City Council out of executive session at 10:30 p.m.

There being no further business to come before the Council, Council member Smith made a motion to adjourn. Council member Hein seconded the motion. Voting AYE: Council members Kroesing, Scribner, Rogers, Hein, and Smith. Voting NAY: None. Council member Yindrick was absent. The motion carried and Mayor Trowbridge declared the meeting adjourned at 10:31 p.m.

Mayor Dana Trowbridge

ATTEST:

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES
December 9, 2009

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of December 9, 2009; 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, City Clerk

