

CITY COUNCIL PROCEEDINGS

January 12, 2005

The City Council of the City of David City, Nebraska met in open public session in the meeting room of the City Office, 557 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner-Press on January 6, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor and Council members conveyed the availability of the Agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Stephen Smith, Council members Gary L. Kroesing, Ted Lukassen, Mark Kirby, Gary Smith, Nick Hein, and Bill Schatz, City Administrator Jeff Fiegenschuh, City Attorney Jim Egr, Police Chief Stephen Sunday, Water/Sewer Supervisor Jim Kruse, Electric Supervisor Tim Kovar, Street Superintendent Jim McDonald, Park/Auditorium Supervisor Bill Buntgen, Duane Zegers, Dorothy Bohaty, Don Moravec representing Michael Moravec CPA PC, Matt Rief of Olsson Associates, Banner Press Editor Larry Peirce, and City Clerk-Treasurer Joan E. Kovar.

The meeting opened with the Pledge of Allegiance.

The minutes of the December 8, 2004 meeting of the Mayor and City Council were approved upon a motion by Council member Smith and seconded by Council member Kroesing. Voting YEA: Council members Schatz, Lukassen, Hein, Kirby, Kroesing, and Smith. Voting NAY: None. The motion carried.

Mayor Smith asked for Petitions, Communications and Citizens' Concerns in addition to those contained in the Agenda packets. There were no petitions. A "Thank You" was received from the David City Housing Authority (Sunshine Court) which stated they appreciated the City Council waiving their water bill at the December 8th council meeting. The read-out meter did not accurately record their usage. The main water meter registered approximately two million gallons more water used. This discrepancy led to an outstanding bill of approximately \$4,767.00. The David City Housing Authority also expressed their appreciation towards the street crew keeping the roads cleaned during the winter months.

Council member Kirby expressed a concern regarding property owners not clearing the snow from their sidewalks. The property owner in question lives in California, and Council member Kirby questioned if the City could legally hire someone to clean the walks and then bill the property owner. City Clerk Kovar stated that perhaps the property owner wasn't aware of the city ordinance that requires sidewalks in the residential area be cleaned within twenty-four (24) hours after the cessation of a storm. City Attorney Egr stated that ignorance of the law doesn't excuse you, but agreed with City Clerk Kovar that some property owners may not be aware of the city ordinance. Council member Kroesing reported that "Ayes" that was the problem. The property owner wasn't aware of the ordinance. The owner has someone to mow the lawn, and will now contact someone to clear the sidewalks. Street Superintendent McDonald stated that if he uses the bobcat to clean the snow from sidewalks, he would charge \$35/hr.

Mayor Smith asked for consideration of claims. Council member Kroesing made a motion to authorize the payment of claims. Council member Smith seconded the motion. Voting YEA: Council members Lukassen, Schatz, Hein, Kirby, Kroesing, and Smith. Voting NAY: None. The

motion carried.

Council member Kirby made a motion to advance to agenda item #10 - Consideration of bid specifications for a street improvement project as presented by Olsson Associates. Council member Lukassen seconded the motion. All of the council members were present, all voted YEA, and the motion carried.

Matt Rief of Olsson Associates presented the street improvements regarding CDBG No. 04-PW-019. Matt reported that they are proposing:

- 24' roadway for Lakeside Drive consisting of 19' of asphalt and 22" curbed and gutter;
- 27' roadway for 6th Street between Kansas and Nebraska
consisting of 22' of asphalt and 22" curbed and gutter;
- 27' roadway for Iowa Street from the Railroad to 4th Street,
and 3rd Street from Iowa Street to A Street.
- replacing the asphalt on 6th Street between Nebraska and C Street,
and Nebraska Street from 5th to 6th Street with 6" of asphalt;

Council member
Kroesing made a motion to
authorize Olsson Associates to
advertise for bids for the street improvement project. Council member Smith seconded the

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

Council member Smith made a motion to advance to agenda item #9 - 7:30 p.m. Public Hearing to consider amending the land use plan to change property located in part of the SW 3 in Section 30, Township 15, Range 3 East, containing 23 acres more or less, from Highway Commercial to Mobile Home Residential. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mayor Smith declared the Public Hearing open at 7:42 p.m. to consider amending the land use plan to change property located in part of the SW 3 in Section 30, Township 15, Range 3 East, containing 23 acres more or less, from Highway Commercial to Mobile Home Residential. The Planning Commission met on November 13, 2004 and recommended to the Council that the Land Use Plan map remain as Highway Commercial pending the completion of the Comprehensive Plan. Council member Schatz had visited with Duane Zegers concerning the proximity of the 23 acres to a residential area. There may be a prospect of resubmitting a different area that would be from the driveway south leaving a buffer next to the residences. There being no further comments, Mayor Smith declared the Public Hearing closed at 7:44 p.m.

Council member Hein made a motion to advance to agenda item #11 - Consideration of an Ordinance to amend the Land Use Plan Map to change property located in part of the SW 3 in Section 30, Township 15, Range 3 East, containing 23 acres more or less, from Highway Commercial to Mobile Home Residential. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Schatz made a motion to table indefinitely amending the Land Use Plan Map to change property located in part of the SW 3 in Section 30, Township 15, Range 3 East, containing 23 acres more or less, from Highway Commercial to Mobile Home Residential. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

ORDINANCE NO.

AN ORDINANCE TO AMEND THE LAND USE PLAN BY CHANGING THE ZONING CLASSIFICATION OF REAL ESTATE DESCRIBED FROM HIGHWAY COMMERCIAL (HC) TO MOBILE HOME RESIDENTIAL (MHR), REPEAL ANY ORDINANCES IN CONFLICT HEREWITH; DESCRIBE THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT, AND PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. That the land use plan be amended as follows:

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

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

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

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

Passed and adopted this _____ day of _____, 2005.

 Tabled indefinitely
City Clerk Joan E. Kovar

 Tabled indefinitely
Mayor Stephen Smith

Council member Hein made a motion to advance to agenda item #8 - Presentation of the Keno Audit by Michael L. Moravec, CPA, P.C.. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Don Moravec presented the Keno audit for fiscal year ended September 30, 2004 and reported that during the performance of the 19 agreed-upon procedures, no findings were noted. The Lottery Operator and Sponsor are in compliance with applicable provisions of the Nebraska County and City Lottery Act and regulations issued thereunder.

Council member Kirby made a motion to accept the Keno Audit as presented by Don Moravec of Michael L. Moravec, CPA, P.C. for the fiscal year ended September 30, 2004. Council member Smith seconded the motion. Voting YEA: Council members Kroesing, Hein, Lukassen, Smith, and Kirby. Voting NAY: None. Council member Schatz had stepped out of the council chambers. The motion carried.

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

Street Superintendent Jim McDonald reported that the Grubaugh sale yard, located between Oak Street and County Rd. M and South of the Union Pacific Railroad, was sold to Mark Holoubek. Previously the snow was dumped at the Grubaugh sale lot, however there was a broken culvert in the ditch along Oak Street which McDonald removed. Grubaugh will need to purchase a new culvert and the City will install it. The snow was hauled to the City Park for dumping. McDonald said that there is a drainage route through this property and questioned if the city needed an easement. City Attorney Egr stated that it may be a prescriptive easement if it has been there for 10 years. This will be researched. McDonald stated that he appreciated the help the street department received with the snow removal from Tim Kovar, Tim Kozisek, and Eric Betzen.

McDonald stated that he was advised by Burbach Aquatics to drain the swimming pool at the end of the season, and then when it gets cold to fill the pool 2' from the top. This is what he has done. McDonald thanked Park/Auditorium Supervisor Bill Buntgen for his help in closing the pool this fall and getting it ready for winter.

Police Chief Sunday reported that Pat Prothman has been cleaning up the property located at 320 N. 10th Street and is currently working on all new plumbing and piping. Sunday also reported that County Clerk Meysenburg informed Sunday that the County School Superintendent will be out of the Police Department building by the end of February

Ice Fishing at the city lakes was discussed. Council member Kirby said it was his understanding that the City didn't want people to ice fish because of concerns of the ice being paper thin by the aerators. Police Chief Sunday stated that is what he understood and so the police have been telling people that they can't ice fish. A gentleman from Albion called the Game and Parks Commission to register a complaint that he was very upset that he drove all the way to David City and then was not allowed to ice fish.

Fiegenschuh received the following letter from Rick Eades, Urban Fisheries Specialist, Nebraska Game and Parks Commission:

I talked with Gary Kroesing earlier this morning about the aerators at the David City pond. As I discussed with him, it is not necessary to run the aerators all winter in order to support the trout and prevent winter fish kills in your lake. Winter kills are a concern if ponds are shallower than 10 feet. Since the David City pond was deepened several years ago to 12-15 feet deep, the chance of a fish kill is greatly diminished.

If you turn off the aerators, you would eliminate the open water areas, which are a concern given that people want to ice fish for the trout. Thus safety would be improved, though as I told Gary, there is no such thing as safe ice. One thing you would need to do is to clear off any large amounts of snow on the ice. Clear, thick ice does not block much of the sunlight needed for photosynthesis by plants and algae in the water, but a layer of snow will. If you get several inches of snow, over three inches of ice is enough to block all sunlight from reaching the water and cause a fish kill. Running the aerators eliminates this risk by keeping areas of the lake open and providing oxygen. If you turn off the aerators, you should clear some of the snow off the ice to prevent problems. You don't need to clear the whole surface of the lake, about a third would be sufficient.

Once the weather begins to warm in early spring and the ice becomes too thin for ice fishing you can turn the aerators back on, which will speed the breakup of the ice and provide open water fishing sooner.

Park/Supervisor Buntgen stated that the aerator's manufacturer recommends that we turn the motors off when the temperature gets below freezing which helps to extend the life of the motor. The Council suggested that the aerators be turned off and Buntgen monitor the lakes and turn the aerators on when needed. Buntgen stated that once the aerators are shut off, it should be at least 32° before they are restarted. There are currently three aerators in the east lake and four aerators in the west lake. After much discussion it was decided that one aerator will remain running in each lake. People will be allowed to fish at their own risk. City Attorney Egr stated that if the City posts signs and then takes them down it is like the City is saying it is OK now. Egr stated it is better if the City doesn't have any signs at all, and then it's at their own risk.

City Administrator Fiegenschuh reported that the Chamber Annual Banquet is scheduled for Monday, January 31, 2005.

Mayor Smith reported that Council member Schatz has suggested that the budget be looked at more closely. Therefore, a budget/finance committee was appointed consisting of Mayor Smith, City Administrator Fiegenschuh, City Clerk Kovar, and Council members Schatz, Smith, and Hein. They will try to schedule their meetings on Wednesday evenings.

Council member Kroesing stated that the swimming pool committee needs to start meeting

also. Council members Kroesing, Smith, and Lukassen are on the pool committee.

Mayor Smith scheduled a Committee of the Whole meeting for Monday, January 24, 2005 at 6:00 p.m. in the City Office meeting room.

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

Mayor Smith declared a ten minute recess at 8:55 p.m.. The meeting resumed at 9:05 p.m..

In a letter, Gregory B. Minter, of the Law Office Fitzgerald, Schorr, Barmettler & Brennan, explained that Henningsen Foods, Inc., is acquiring new equipment for its David City plant. General Electric Capital Corporation is providing the funding for the new equipment in a maximum amount of \$1,170,000.00. As further collateral for the financing, General Electric Capital requires that it obtains a security interest in the property which was previously acquired through the proceeds of bond issues which have been redeemed. Therefore, Council member Kroesing made a motion to authorize Mayor Smith to execute the Release of Lien and Consent to Installation and Waiver. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Hein made a motion to approve the request of Doug & Jeanne= Osborn to combine Lots 2 & 3, Block 18, Will Thorpe & Perkins Addition to form one lot 100' x 140'. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Kirby made a motion to designate 1st National Bank of Omaha-David City Branch; U.S. Bank - David City Branch; Union Bank - David City Branch; and Bank of the Valley - David City Branch; as depository banks for the City of David City/David City Utilities. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Kirby made a motion to pass Ordinance No. 986 on the third and final reading. Council member Smith seconded the motion. Voting YEA: Council members Hein, Kroesing, Schatz, Lukassen, Kirby, and Smith. Voting NAY: None. The motion carried and Ordinance No. 986 was passed on third and final reading as follows:

ORDINANCE NO. 986 AN ORDINANCE OF THE
CITY OF DAVID CITY PROHIBITING PRIVATE POSSESSION OR SALE OF EXOTIC
ANIMALS BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE
CITY OF DAVID CITY, NEBRASKA:

Section 1 Intent It is the intent of the City of David City to protect the public against health and safety risks that exotic animals pose to the community and to protect the welfare of the individual animals held in private possession. Exotic animals are wild and potentially dangerous in a captive environment.

Section 2 Definitions A. "Animal control authority" means any agency designated by the mayor and city council responsible for animal control. B. "Exotic animal" means those species of animals that are wild by nature, including any or all hybrids, which, because of habitat, mode of life, or natural instinct, are incapable of being completely domesticated, and require the exercise of art, force, or skill to keep them in subjection, whether bred in the wild or in captivity. Examples of wild or exotic animals include, but are not limited to hawks, owls, mink, monkeys, deer,

skunks, alligators, crocodiles, caimans, raccoons, opossums, any cat not a member of the family felis domestica, including, but not limited to, tigers, lions, panthers, and lynxes, and any dog not a member of the family canis familiaris, including, but not limited to, wolves, foxes, and coyotes. All venomous snakes and non-venomous snakes including but not limited to Paupan python, Peruvian black-tailed boa, Guyana red-tailed boa, Suriname red-tailed boa, argentine boa, green anaconda, yellow anaconda, oenpelli python, amethystine python, bar-neck amethystine python, boelens python, Burmese python, tiger reticulated python dwarf reticulated python and African rock python. Also included as an exotic animal are the following types of lizards: gila monster, Mexican beaded lizard, Bengal monitor, gray=s monitor, blackthroat monitor, gould=s/sand monitor, Nile monitor, green iguana, water monitor, lace monitor.

C. A Domestic Animal@ means any of various animals domesticated by people to live and breed in a tame condition and shall include, but not limited to dogs, cats, ferrets, guinea pigs, rabbits and gerbils.

D. "Person" means any individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate or any other legal entity, and any officer, member, shareholder, director, employee, agent or representative thereof. E. "Possessor" means any person who owns, possesses, keeps, harbors, brings into the state, has in one's possession, acts as a custodian, or has custody or control of a exotic animal. F. "Wildlife sanctuary" means a non-profit organization described in Section

170(b)(1)(A)(vi), Internal Revenue Code 1986, and its subsequent amendments, that operates a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced exotic animals are provided care for their lifetime or released back to their natural habitat and, with respect to any animal owned by the organization, does not: conduct any activity that is not inherent to the animal's nature; use the animal for any type of entertainment; sell, trade or barter the animal or the animal's body parts; or breed the animal for any purpose.

Section 3 Keeping of Exotic Animals Prohibited A. It shall be unlawful for any person within the corporate limits of the city to own, sell, possess, keep, harbor, bring into the city, have in one's possession, act as a custodian, or have custody or control of an exotic animal, except in compliance with this act.

B. It shall be unlawful for a person to breed an exotic animal.

Section 4 Exemptions A. The provisions of this act shall not apply to: Licensed Zoos and Aquariums. Duly incorporated non-profit animal protection organizations. Animal control or law enforcement agencies or officers. Licensed veterinary hospitals or clinics. Any wildlife sanctuary as defined under this act. Any licensed or accredited research or medical institution. Any licensed or accredited educational institution. Any lawfully operated circus or rodeo. Any person exempted by Nebraska law consistent with Sec. 37 of the Neb. Rev. Stats.

B. Permits

Any person owning an exotic pet with the exception of all venomous snakes, constricting snakes more than 7 feet in length, monkeys, deer, skunks, alligators, crocodiles, tigers, caimans, raccoons, any cat not a member of the family felis domestica, including, but not limited to lions tigers, panthers, and lynxes, and any dog not a member of the family canis familiaris, including, but not limited to, wolves, foxes, and coyotes on or before February 9, 2005 shall file for a permit with the City of David City. All exotic pets listed above are not covered by this exception and are banned under this ordinance. Each permit, which will be kept on file at the David City Office, shall include the owner=s name, address, phone-number, type of animal in possession and the animal=s length and weight. The city administrator and the city clerk shall sign all permits. The owner shall then be responsible for filing another permit with the City of David City if he/she moves. If a new permit is not filed with the city within one month of the owner moving the owner will no longer be allowed to keep the specified animal within the corporate limits of David City.

This exception does not cover owners who have had a pet die or who have sold a pet.

Section 5 Enforcement of Article The city animal control authority, its staff, its agents, any city, county or state law enforcement officer, are authorized and empowered to enforce the provisions of this ordinance. **Section 6 Inspection** The possessor of an exotic animal consistent with this act, at all reasonable times, shall allow the animal control authority, its staff, and its agents to enter the premises where the animal is kept to ensure compliance with this act.

Section 7 Confiscation and Disposition of Exotic Animals A. The animal control authority or law enforcement officer may immediately confiscate any exotic animal if the animal is kept in contravention of this act. The possessor is liable for the costs of placement and care for the exotic animal from the time of confiscation until the time of return to the possessor or until the time the animal has been relocated to an approved facility. B. If an exotic animal is confiscated due to the animal being kept in contravention of this act, the possessor must post a security bond or cash with the animal control authority in an amount sufficient to guarantee payment of all reasonable expenses expected to be incurred in caring and providing for the animal, including but not limited to the estimated cost of feeding, medical care, and housing for at least thirty (30) days. The security bond or cash shall not prevent the animal control authority from disposing of the animal at the end of the thirty (30) days unless the person claiming the animal posts an additional security bond or cash with the animal control authority to secure payment of all reasonable expenses expected to be incurred in caring and providing for the animal for an additional thirty (30) days, and does so prior to the expiration of the first thirty (30) day period. The amount of the security bond or cash shall be determined by the animal control authority and based on the current rate to feed, provide medical care, and house the animal. C. If a confiscated animal possessor cannot be located or if a confiscated animal remains unclaimed, in the discretion of the animal control authority, the animal control authority may contact an approved facility and allow the animal to be adopted by an authorized person or facility or may euthanize the animal. D. If the exotic animal cannot be taken up or recaptured safely by the animal control authority or if proper and safe housing cannot be found the animal control authority may immediately euthanize the animal. E. An exotic animal may be returned to the possessor only if, to the satisfaction of the animal control authority, the possessor is exempt from this act or has a legal possession permit, has corrected the conditions resulting in the confiscation, and has paid the cost of placement and care of the animal while under the care and control of the animal control authority. **Section 8 Penalties** A. Any person, upon violation of the provisions of this ordinance, who shall fail, neglect, or refuse to comply with any of the provisions of this section shall be in violation of this ordinance and upon conviction thereof, shall be fined as follows:

First violation	\$25.00 fine; forfeiture of animal
Second violation	\$50.00 fine; forfeiture of animal
Third violation	\$75.00 fine; forfeiture of animal
Fourth violation	\$100.00 fine; forfeiture of animal

Section 9 Effective Date A. Except as provided by this section, this act takes effect on January 20, 2005. **Section 10 Severability** If any part of this act is found to be unconstitutional or unenforceable it shall not affect the constitutionality or enforce-ability of any other part. Any other ordinance or section passed and approved prior to passage, approval, and publication or this ordinance and in conflict with its provisions is repealed. **Section 11 Passage** This ordinance shall be published in pamphlet form and shall be in full force and effect from and after

its passage as provided by law. Passed and approved this 12th day of January, 2005.

(Seal)

Mayor Stephen Smith

City Clerk Joan E. Kovar

Ordinance No. 989 was discussed. Several issues were brought up. City Clerk Kovar questioned '7-104.02 which states Liquefied petroleum may be stored in areas that are zoned I-2, I-1, and B-2, however, David City doesn't have that zoning. Kovar also made reference to '7-105 that states "Application to Store Hazardous Materials" shall be made in duplicate to the Fire Chief and Zoning Administrator on forms supplied by the City and kept on file in the Fire Department. The City Office doesn't have these forms. Council member Schatz felt that Zoning Administrator Kotil should study '7-102 through '7-105. Council member Hein stated that he didn't like the second sentence in '7-203 which states "The Fire Chief and Assistant Fire Chief shall have the power and authority, while fighting a fire and for a period of thirty-six (36) hours after its extinguishment, to command any such person to assist them in the performance of their official duties." City Attorney Egr stated that authority is allowed by State Statute. Egr stated that Article 2; '7-201 through '7-207 could be eliminated because the City doesn't have control over the Fire Department. City Attorney Egr stated that the City turned the Fire Department over to the Rural Fire Department and so technically we have no jurisdiction over them. Due to all of the concerns, Council member Hein made a motion to table Ordinance No. 989. Council member Kirby seconded the motion. Voting YEA: Council members Lukassen, Smith, Schatz, Kroesing, Hein, and Kirby.. The motion carried.

ORDINANCE NO.

989

AN ORDINANCE AMENDING CHAPTER 7: FIRE REGULATIONS OF THE DAVID CITY MUNICIPAL CODE BOOK; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. Chapter 7: Fire Regulations of the David City Municipal Code Book be amended to read as follows:

Chapter 7
FIRE REGULATIONS

Article 1. Fire Prevention

' **7-101 FIRE PREVENTION; ADOPTION OF UNIFORM FIRE CODE.** There is hereby adopted by the City of David City, Nebraska, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion that certain Code and Standards known as the Uniform Fire Code Standards which Code makes reference to the National Fire Code, published by Western Fire Chiefs= Association and the International Conference of Building Officials, being the current editions thereof and the whole thereof, except such portions as are hereinafter deleted, modified or amended by this Chapter, of said Code and Standards.

One (1) copy is on file with the City Clerk of the City of David City, Nebraska.

These Codes are hereby adopted and incorporated as fully as if set out at length, herein, and from the date on which this Chapter shall take effect, the provisions of these Codes shall be controlling within the limits of the City of David City, Nebraska. (Ref. 18-132, 19-902, 19-922, 81-502 RS Neb.)

' **7-102 FIRE PREVENTION; DEFINITIONS.**

- a. The word "jurisdiction" used in the Uniform Fire Code, means the zoning jurisdiction of the City of David City.
- b. The term "Municipal official" means all elected and appointed officials of the City of David City.

' **7-103 FIRE PREVENTION; OFFICERS RESPONSIBLE FOR CODE ENFORCEMENT.**

- a. Inspection under the Uniform Fire Code shall be accomplished principally by the Zoning Administrator, the Fire Chief, Police Chief, and the Police Officers.
- b. For special or unusual situations the Zoning Administrator or the Fire Chief may recommend to the City of David City the employment of special technical inspectors to improve the enforcement of these codes.

' **7-104 FIRE PREVENTION; FIRE LIMITS DEFINED.** The following described territory in the Municipality shall be and constitute the fire limits:

The corporate limits of the City of David City, Nebraska
as they exist from time to time

' **7-104.01 FIRE PREVENTION; STORAGE OF FLAMMABLE OR COMBUSTIBLE LIQUIDS PROHIBITED.** The storage of flammable or combustible liquids in outside aboveground tanks is prohibited within the Residential, Public, Semi-Public and Park areas. (Ref. 17-137 RS Neb.)

' **7-104.02 FIRE PREVENTION; STORAGE OF LIQUEFIED PETROLEUM RESTRICTED.** In the zones where storage of liquefied petroleum is permitted, the provision of the Uniform Fire Code shall govern. Liquefied petroleum may be stored in areas that are zoned I-2, I-1, and B-2. (Ref 17-137 RS Neb.)

' **7-104.03 FIRE PREVENTION; STORAGE OF EXPLOSIVES AND BLASTING AGENTS PROHIBITED.** No areas are zoned to permit the storage of explosives and blasting agents except as regulated in Section 77.106(b) of the Uniform Fire Code. (Ref. 17-

137 RS Neb.)

'7-105 **FIRE PREVENTION; PERMIT FOR HAZARDOUS MATERIALS.** Hazardous materials may be stored within the Commercial and Industrial zones referred to in Section 7-104 provided that all such materials are identified as to kind, amount, location and other data concerning said materials in an Application to Store Hazardous Material made annually on August 1, or on the date when such materials are initially placed in the City, to the Fire Chief and the Zoning Administrator, which application must be made by the person in control of such materials. An Application to Store Hazardous Materials shall be made in duplicate to the Fire Chief and Zoning Administrator on forms supplied by the City and kept on file in the Fire Department. (Ref. 17-137 RS Neb.)

'7-106 **FIRE PREVENTION; BURNING REGULATIONS WITHIN FIRE LIMITS.** Within the prescribed fire limits, burning is allowed in incinerators that conform to the standards hereinafter set forth. An approved City permit must be issued for the incinerator prior to its use.

Barrels, steel cans, masonry boxes, whether covered or not, are not classified as incinerators. Boilers and wood burning stoves may be used as outside commercial incinerators only if they substantially meet the requirements hereinafter set forth specifically including the requirements of spark arresters and foundations.

Incinerators to be used inside buildings shall conform to the standards as specified in the Codes adopted in Section 7-101.

Outside commercial incinerators for use in the fire limits shall, as a minimum, be constructed of steel plate not less than three-sixteenths (3/16) inches in thickness. The base or burning area of the incinerator may not exceed sixteen (16) square feet in area. All joints and seams of the incinerator must be welded together, except for access doors. There be no more than two (2) access doors for each incinerator. The base walls or burning area of the incinerator must have at least six (6), but not more than ten (10) ventilation holes in each wall of the incinerator base. The holes shall not be greater than one (1") inch in diameter. The base or burning area of the incinerator must be covered with a chimney with an opening not to exceed one (1) square foot in diameter. Chimneys shall be connected to the incinerator base or burning area as noted above. The terminating point of the chimney shall extend above the incinerator base or burning area the same distance as the height of the incinerator base or burning area. The chimney must terminate in a steel, or substantially constructed, spark arrester having mesh openings of not more than one half (2@) inch in diameter or one-quarter (3@) inch mesh. Spark arresters must cover the entire chimney opening. Incinerators may have a hole, not to exceed nine (9) square inches, in the bottom of the incinerator base.

Outside commercial incinerators must meet the location standards of Section 7-107.02. Inside incinerators shall be approved by an independent testing or rating agency and must conform to the Codes adopted in Section 7-101. (Ref. 17-549, 17-556, 81-520.02 RS Neb.) (Amended by Ord. No. 644, 9/25/85)

'7-107 **FIRE PREVENTION; BURNING AND FIRES PROHIBITED; EXCEPTION AND REGULATIONS.** All open burning and open fires in the City are prohibited, except; in barbecues, outdoor fireplaces or with written permission of the Fire Chief for a particular event. Approved containers may be used for burning of materials that do not give off toxic gases or fumes, offensive or foul odors, or dirty or oily smoke. Permitted materials include paper, cardboard, wood, etc.. Prohibited materials

include feathers, meat, tires, oil or other noxious material. (Ref. 17-549, 17-556, 81-520.01 RS Neb.) (Amended by Ord. No. 644, 9/25/85)

- ' **7-107.01 FIRE PREVENTION; DESIGN OF CONTAINERS FOR AREAS OTHER THAN THE FIRE LIMITS.** For areas other than the fire limits, steel containers, as hereinafter defined, shall be used. Steel containers for burning in areas other than the fire limits are defined as follows: A steel container used for burning must have a volume of at least thirty (30) gallons and not more than sixty (60) gallons. The container must be held above the ground at least 4" to 6" by steel, concrete or masonry material in a stable, plumb manner. It must have six (6) but not more than ten (10) holes in the walls, the diameter of which shall be not more than one (1") inch, all located in the lowest ten (10%) per cent of the sidewalls. There must be a woven or punched metal cover over the top of the container with opening not more than one half (2") inch by one half (2@) inch. The cover must be larger in area than the top of the container and must be secured to the container by chains, hinges, or other suitable device. The cover must be visible for inspection to ensure compliance with these provisions. (Ref. 17-549, 17-556, 81-520.01 RS Neb.) (Amended by Ord. No. 644, 9/25/85)
- ' **7-107.02 FIRE PREVENTION; LOCATION OF CONTAINERS.** Containers used for burning must be placed on the property where the user resides and may not be located in a public alley, street, or right-of-way. Containers shall be placed on steel, concrete, or masonry support four (4") inches to six (6") inches high in a plumb manner and on a site where all vegetation and/or combustible material is removed in all directions for a distance of four feet (4') measured from the edge of the container; at least ten feet (10') from any building, garage or shed; at least six feet (6') distance from any utility pole, ground-level transformer or telephone pedestal; a distance of twenty feet (20') measured at the closest point, away from any overhead utility wires or cables; a distance of at least twenty feet (20') from the branches of any tree; and in general; in a manner so as to provide protection to other properties. (Ref. 17-549, 17-556, 81-520.01 RS Neb.) (Amended by Ord. No. 644, 9/25/85)
- ' **7-107.03 FIRE PREVENTION; HOURS PERMITTED.** Burning is permitted from seven o'clock (7:00) a.m. to six o'clock (6:00) p.m. from Monday through and including Saturday. No burning is permitted on Sunday. (Ref. 17-556, 81-520.01 RS Neb.) (Amended by Ord. Nos. 644, 9/25/85; 765, 11/12/92)

Article 2. Fires

- ' **7-201 FIRES; AUTHORITY OF FIRE CHIEF.** When there is a fire, the Fire Chief or the designated Firemen in charge, shall have the authority to do all things that are, in his judgement, necessary to protect life and property in the area adjacent to the fire. (Ref. 17-147 RS Neb.)
- ' **7-201 FIRES; ASSISTANCE.** It shall be unlawful for any person to refuse, after receiving a command of the Fire Chief or Assistant Fire Chief, to aid in extinguishing a fire or to assist in the removal and protection of property. (Ref. 28-908 RS Neb.)
- ' **7-203 FIRES; SPECTATORS.** During the time of a fire, it shall be unlawful for any person to hinder, resist or refuse to obey the Municipal Fire Chief, or to act in a noisy or disorderly manner. The Fire Chief and Assistant Fire Chief shall have the power and

authority, while fighting a fire and for a period of thirty-six (36) hours after its extinguishment, to command any such person to assist them in the performance of their official duties. (Ref. 28-908 RS Neb.)

' 7-204 **FIRES; TRAFFIC.** No vehicle, except by the specific direction of the Fire Chief or Assistant Fire Chief, shall follow, approach, or park closer than five hundred feet (500') to any fire vehicle, or to any fire hydrant to which a hose is connected. Nothing herein shall be construed to apply to vehicles carrying doctors, members of the Fire Department, or emergency vehicles. (Ref. 39-753 RS Neb.)

' 7-205 **FIRES; PEDESTRIANS.** It shall be unlawful for any pedestrian to enter upon or remain in any street or roadway within a distance of three hundred feet (300') from a fire when fire fighting vehicles are approaching or are present at the scene of a fire. (Ref. 28-908 RS Neb.)

' 7-206 **FIRES; FALSE ALARMS.** It shall be unlawful for any person to intentionally and without good and reasonable cause raise any false alarm of fire. (Ref. 28-907 RS Neb.)

' 7-207 **FIRES; DROP CEILINGS; REMOVAL OF TIN CEILING COVERINGS; UNLAWFUL INSTALLATION.** It shall be unlawful to install a drop ceiling in a room or rooms of a commercial building within the City limits with a tin and/or metal ceiling covering without:

1. First removing such tin and/or metal ceiling covering before installation of the drop ceiling; or
 2. Installing a fire sprinkler system. All sprinkler systems installed, from this date, shall comply with the David City Fire Codes:
 - a. Having a static flow test to determine the water pressure;
 - b. Determining the minimum number of heads required, with each head covering the square footage specified in the 1990 Factory Mutual System pocket guide to automatic sprinklers;
 - c. Installing a back-flow device;
 - d. Placing the sprinkler heads below the suspended ceiling;
 - e. Sprinkler heads shall also be installed in basements when the building is being remodeled by at least fifty percent (50%) of its assessed value;
 - f. Having a pre-approved plan.
- (Ord. No. 787, 12/20/93) (Amended by Ord. No. 789, 7/13/94)

Article 3. Penal Provision

' 7-301 **VIOLATION; PENALTY.** Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred dollars (\$100.00) for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

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

repealed.

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

Passed and approved this _____ day of _____, _____.

 Tabled
Mayor Stephen Smith

 Tabled
City Clerk Joan E. Kovar

At the December council meeting the council decided to sell the Brahmsteadt property located at 988 E Street at public auction. The Council decided to hire Kobza Auction & Realty. City Egr stated that he would take care of the advertising requirements. Council member Hein made a motion to pass and adopt Resolution No. 1-2005. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. Resolution No. 1-2005 was passed and adopted as follows:

RESOLUTION NO. 1 - 2005

WHEREAS, Nebraska State Statute 17-503 allows any city of the second class to convey any real and personal property owned by it providing the passage of a resolution directing the sale at public auction or by sealed bid of such real and personal property and the manner and terms thereof; and,

WHEREAS, the City of David City, Nebraska, is the owner of the building and property described as the East 80' of Lot 5, Block 3, Miles 2nd Addition to David City, Nebraska, and,

WHEREAS, the City of David City, Nebraska, desires to sell said building and property, as is, to the highest bidder.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the City of David City be allowed to conduct a sale of real and personal property and that notice be given that said building and property is for sale as is and that a public auction will be scheduled for the sale of the building and property. Terms of the sale will include payment within 30 days. The City will pay the documentary stamp and real estate taxes. The City and buyer will split the cost of the title insurance 50/50. The property must be cleaned up and the house demolished/removed and debris cleaned up within 90 days from closing date of the sale. The City reserves the right to reject any and all bids.

BE IT FURTHER RESOLVED that the sale of real and personal property and the terms thereof shall be published once each week for three consecutive weeks in a legal newspaper published in or of general circulation in David City.

Dated this 12th day of January, 2005.

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 January 6, 2005; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification 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