

**ACKNOWLEDGEMENT OF RECEIPT OF NOTICE OF MEETING  
OF THE MAYOR AND CITY COUNCIL OF  
THE CITY OF DAVID CITY, NEBRASKA**

The undersigned members of the governing body of the City of David City, Nebraska, hereby acknowledge receipt of advance notice of a regular meeting of said body and the agenda for such meeting to be held at 7:00 o'clock p.m. on the **14<sup>th</sup> day of October, 2015**, in the meeting room of the City Office, 557 N 4<sup>th</sup> Street, David City, Nebraska.

This agenda is available for public inspection in the office of the City Clerk and may be modified up to twenty-four hours prior to the opening of the meeting.

Dated this 7<sup>th</sup> day of October, 2015.

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Mayor Alan Zavodny

**AGENDA AS FOLLOWS:**

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| 1. Roll Call;                                                                                                                                                                                                                                                  | <hr/> <p>Council President Gary L. Kroesing</p>                                      |
| 2. Pledge of Allegiance;                                                                                                                                                                                                                                       |                                                                                      |
| 3. Inform the Public about the location of the Open Meetings Act and the Citizens Participation Rules;                                                                                                                                                         | <hr/> <p>Council member Michael E. Rogers</p>                                        |
| 4. Minutes of the September 9 <sup>th</sup> , and September 23 <sup>rd</sup> , 2015 meetings of the Mayor and City Council;                                                                                                                                    | <hr/> <p>Council member Thomas J. Kobus</p>                                          |
| 5. Consideration of Claims;                                                                                                                                                                                                                                    |                                                                                      |
| 6. Committee and Officer Reports;                                                                                                                                                                                                                              |                                                                                      |
| 7. Consideration of NPPD's Wholesale Contract options, and Capacity Purchase Agreement;                                                                                                                                                                        | <hr/> <p>Council member Kevin N. Hotovy</p>                                          |
| 8. Consideration of the outside steps on the Wolfe Building at the NW corner of 4 <sup>th</sup> & "E" Street;                                                                                                                                                  | <hr/> <p>Council member Gary D. Smith</p>                                            |
| 9. Consideration of the design work for the "D" Street Downtown Renovation Project;                                                                                                                                                                            |                                                                                      |
| 10. Public Hearing to consider amending Ordinance No. 1060 – Zoning Ordinances – by adding Mobile Food Units to Definitions; adding Section 4.25 Mobile Food Units; and amending Section 5.12.04 -Permitted Temporary Uses - by adding #6 – Mobile Food Units; | <hr/> <p>Council member John P. Vandenberg</p> <hr/> <p>City Clerk Joan E. Kovar</p> |

11. Consideration of Ordinance No. 1236 amending Ordinance No. 1060 – Zoning Ordinances – by adding Mobile Food Units to Definitions; adding Section 4.25 Mobile Food Units; and amending Section 5.12.04 -Permitted Temporary Uses - by adding #6 – Mobile Food Units;
12. Discussion concerning the current Business Climate in David City;
13. Consideration of an agreement for professional services with Olsson Associates for a Water Main Improvement and Replacement Project to include a water main utility replacement and improvement design, construction administration and observation at various locations within David City;
14. Consideration of selecting an emergency notification system for the City/Utilities;
15. Consideration of Ordinance No. 1237 amending Ordinance No. 1040 by deleting vehicles from Article 4. Nuisances
16. Consideration of forming a committee to review and update the Municipal Code Book;
17. Discussion and consideration of the City's Health Insurance renewal options;
18. Adjourn.

## CITY COUNCIL PROCEEDINGS

October 14, 2015

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 4<sup>th</sup> Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on October 1<sup>st</sup>, 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 Alan Zavodny, Council President Gary Kroesing, Council members Kevin Hotovy, Thomas Kobus, Gary Smith, and Mike Rogers. Also present were City Attorney Jim Egr, and City Clerk / Interim City Administrator Joan Kovar. Council member John Vandenberg was absent.

Also present for the meeting were: Sheriff Marcus Siebken, Michelle Longenecker, Janis Cameron, Mike Draper, Bryon Forney, David McPhillips, Chad Podolak of NPPD, Ryan Ruth of Agency One Insurance, Mark Champion of Champion Olson Architects, Kirsten Husmann, Banner Press Editor Larry Peirce, Electric Plant Supervisor Eric Betzen, and Street Foreman Rodney Rech.

The meeting opened with the Pledge of Allegiance.

Mayor Zavodny informed the public of the "Open Meetings Act" posted on the east wall of the meeting room.

The minutes of the September 9<sup>th</sup>, and September 23<sup>rd</sup>, 2015 meetings of the Mayor and City Council were approved upon a motion by Council member Kroesing and seconded by Council member Kobus. Voting AYE: Council members Hotovy, Smith, Kobus, and Kroesing. Voting NAY: None. Council members Rogers and Vandenberg were absent. The motion carried.

Mayor Zavodny asked for consideration of claims. Council member Smith made a motion to authorize the payment of claims and Council member Kobus seconded the motion. Voting AYE: Council members Kroesing, Hotovy, Smith, and Kobus. Voting NAY: None. Council members Rogers and Vandenberg were absent. The motion carried.

Mayor Zavodny asked for any comments or questions concerning the Committee and Officer Reports.

Council member Mike Rogers arrived at approximately 7:05 p.m.

Mayor Zavodny stated: "An anonymous call was made to the Nebraska Auditor of Public Accounts that there was possible waste, mismanagement of funds, or fraud within government concerning our 1.5% local sales tax. They have reviewed the information that we provided them, they do not believe the concern was valid, and they closed the case. We were confident everything was in order but someone had complained and we were able to answer that complaint successfully. The other item, since it's on a committee report, I want you to think about, and let me know, if you have any interest in changing our November date because it does fall on Veteran's Day, so it's up to you. We'll need ample notice to get that advertised, so if you have strong feelings about that, if you'll let me know we can work with the Office because they'll be closed that day; they would have to come for a meeting that night, so if you'll let me know."

Council members Kroesing and Rogers said they would not be available that day. Council member Smith suggested the 19<sup>th</sup>. Mayor Zavodny stated that we will take a look at that and let them know.

Street Supervisor Rodney Rech stated that they worked on a sink hole east of the Hruska Memorial Public Library in the center of 5<sup>th</sup> Street between "C" and "D" Streets. He stated that it did go about 10' to the north and they filled it with flowable fill.

Council member Hotovy made a motion to accept the committee and officers reports as presented. Council member Smith seconded the motion. Voting AYE: Council members Kobus, Kroesing, Smith, Hotovy, and Rogers. Voting NAY: None. Council member Vandenberg was absent. The motion carried.

Chad Podolak, Account Manager of Nebraska Public Power District, was present and stated: "I just wanted to bring you up to speed on a couple of items as it relates to the Wholesale Power Contract and the Capacity Purchase Contract. Since we last visited, our Board has approved the Wholesale Power Contract and next week they're likely to approve the Capacity Purchase Contract, so just thought I'd spend a little time with you just bringing you up to speed on where things are at. We have a process through a rate hearing which you may

have heard of which occurred last week, our current contract we have a rate here in process, so those who may not agree with how we are handling our rates can request a rate hearing, and it's kind of a formal process, but what we have is we have some unfunded liabilities as it relates to our healthcare and we're rolling those into the rates for all of our wholesale customers January 1, 2016, and some wholesale customers protested that and so there were some that shared their concerns with our board. We had about an equal amount of people, wholesale customers that showed support for the process that was pursuant and we had a whole bunch of people in the middle; again we have about 75 wholesale customers. Not yet for sure how that plays out. I don't know that things will change, however we do have a board meeting next week to make a decision on that, so the way that works, we have some unfunded health care obligations and we're going to get caught up on those. So, for those who want to ride out our current contract, they're going to pay their share over about 5 or 6 years; those that extend, or want to extend came to us and said "If we extend with you can we spread that cost out?", and yes, instead of having 5 years to recover that cost we have 20 years, that's those that extend will have the opportunity to bring a 0% on that production piece. So it was a good hearing. There's about four (4) wholesale customers out of our seventy-five (75) that are going to pursue other options and about 71 of our wholesale customers are likely going to continue to look for partnership with NPPD. So the message there is a lion's share of our wholesale customers value the package, they value the generation resources, they value the partnership and are likely moving forward with us in some fashion or another. That's a little bit on where the rates are at."

Mayor Zavodny asked: "Do we know how much money that's going to be because of the health care mandates?"

Chad Podolak stated: "It's a 3.7% increase in January 2016. NPPD has a diverse generation mix and the beauty of that is as public power, as a political subdivision, and through a public power system in the state we have been able to invest in generation resources that make sense for Nebraskans and that's allowed us to realize and utilize a resource mix today that's got nuclear, coal, natural gas, diesel, hydro, wind, and soon we're going to be converting one of our coal plants over to hydrogen. So, we'll have about seven (7) different fuel types which will really play out in our favor. Right now there's a lot of extra surplus capacity in the market, there's a lot of cheap energy in the market, there's also looming regulations coming down the pike that will probably challenge the electric industry as a whole as it relates to managing these regulations. The clean power plan came out last August, two months ago, and it's kind of a game changer in the electric industry. The clean power plan enacts carbon reduction goals for every State. Nebraska's goal in the proposed plan was about 26% carbon reduction from 2012 levels. The final plan came out and Nebraska's reduction is 40% carbon reduction by 2030 with early targets in the year 2022. So, there's regulations out there that are going to have an impact on the power supply in our industry. Right now, today, there's a lot of extra capacity, there's a lot of cheap energy because natural gas is low, but it is perceived that in the near future those things could change. For us, in Nebraska and in particularly for us at Nebraska Public Power District, we have a lot of different levers to pull and push upon to manage that risk and so one of things that we feel comfortable going forward, in this contract, is a performance measure. It's a unique measure and it's the only that we have found in the industry for a twenty (20) year period. You can get in a short term savings, those opportunities exist because there is surplus energy in the market. There's a lot of capacity, the EPA regulations haven't really taken hold, and there's low natural gas, and if your crystal ball says that will continue for twenty (20) years plus then that may be a nice opportunity for you. If you're familiar with the regulations, and if you've spent any time listening to the NDEQ, we in the electric industry as a whole have our hands full. Fortunately for NPPD, all things being equal, we should be less impacted than the average utility mix because our generation mix is 42% carbon free, the national average is 31%, and the Midwest is even less. We have nuclear, we're

going to have hydrogen, we have hydro, we have wind, and we have natural gas which is about half of the carbon as goal. So all things being considered, it's not that NPPD in particular won't have some pains as it relates to these regulations, but respective to the average generation fleet and the average utility mix we feel pretty comfortable going forward with a twenty (20) year commitment from our end that we'll be able to deliver on the price. If you remember our last discussion, one of the key provisions is, in this contract, is that price guarantee or that price component of which we're on the hook for this twenty (20) year contract, and the way that's structured is if our costs equal or exceed a threshold of utility costs in the nation then you have the opportunity to protect your rate payers to look for other power supply options if they exist for a savings opportunity. The difference between our rates today, and where that threshold is met where you can look at other opportunities, is eight tenths of a penny. So the theory is, if our rates go up eight tenths of a cent, or about 13%, yes the businesses in downtown David City have felt that, but you also have a contract that allows you to protect your rates payers if NPPD's on a path of what appears to be higher rates and if there's savings opportunities out there that you can pursue for your rate payers, then you're allowed to do that with this new contract. So, there's a lot of pieces to it, but the performance guarantee, the performance component is one that is unique, and it's the one that provides you protection in this twenty (20) year agreement, that yes, you're on board as long as NPPD does our side of the deal. Then you have some protection for your customers in case that we don't. There are clearly other pieces that are involved with this. This is a package, it's not just a commodity. We help you guys with energy efficiency audits, we have incentives, we've been involved with some power quality issues with some of your larger customers, we do economic development, we have the Capacity Purchase Contract; there are a lot of components in this partnership that is well beyond just a commodity. So, that's kind of where things are at today; we are out and about talking to wholesale customers. It does appear as though the lion's share of our wholesale customers are going to continue their relationship with NPPD. We have four that have elected to pursue other opportunities; that have indicated such, but I would say the lion's share are still looking at the proposed contract that we have on the table today. Like I said, today in this integrated Southwest Power Pool there is a glut of capacity, a glut of energy, and there is low natural gas so energy is cheap, so there are utilities out there that are willing to make deals because they've got that extra capacity. Now a lot of those deals, those are short term in nature because when these regulations come into play, they may not have that extra capacity, or they don't want to lock up that capacity in the event that they have to shut down power plants and then replace it somewhere else. So there are short term opportunities for folks out there in the market place. As a political subdivision, with the responsibility of long term resource planning, our horizon, our vision, our commitment, is the long term in nature."

Mayor Zavodny asked: "And those are the four utilities going with Kentucky; is that the four you know about?"

Chad stated: "Yes."

Mayor Zavodny stated: "When will we actually, I know you said that they were just approved, but it seems like it's getting longer and longer before we can look at those. (The contracts; Chad stated that he had a Capacity Purchase and a Wholesale Contract for us to review today.) What is your time frame then for us looking at this kind of thing because I know we were talking about the first of the year and here we are in October already and we haven't even seen them; you understand my concern."

Chad stated: "What happens is, for those that are on the current contract, after the first of the year the rate goes up 3.7%."

Mayor Zavodny stated: "We just thought we were going to get these a lot sooner. I think we were led to believe that."

Chad stated: "I did leave you copies at one point, of the contract. I believe you were going to go out for legal review and there haven't been many changes. The Wholesale Power Contract is officially approved, the Capacity Purchase one is in draft but that will be approved next week, the 21<sup>st</sup>."

Mayor Zavodny stated: "The one aspect of the Capacity Purchase, what if no fault of our own, we have less than that because maybe somebody leaves, an industry...."

Chad stated: "For your load? Doesn't come into play."

Mayor Zavodny stated: "If we reduce our purchase then the agreement stays at it is, can be adjusted or terminated, and that's for our power plant."

Chad stated: "If you reduce.....if we don't perform in this contract and our costs are high, and you elect to reduce and pursue other wholesale power supply options for your customers..."

Mayor Zavodny stated: "It's not demand? (No) It's just if we choose to go somewhere else if you're ever 13% or ....."

Chad stated: "Your changes in your load, whether it goes way up or way down, is not going to change our commitment on the Capacity Purchase."

Mayor Zavodny stated: "That's what I wanted to be clear on. I've talked to just a bunch since we've been going over this and I've actually just briefly mentioned it to our Council President, but everybody tells me things are very volatile right now, you can't predict anything; locking in. People are coming out of the woodwork saying "You need to join up with these people and these people, and we're going to.....as a bigger group; because we're a gnat to NPPD, we get that. So all this stuff is going on, there are a lot of moving parts and I guess the one issue that's come up from talking to some of these other communities and people in the business is: "Has it been determined that you can charge different rates to different customers?" You know that questions come up."

Chad stated: "Right. That was kind of the genesis of the rate hearing. We had about ten customers in opposition of how we're handling it, we had about ten customers strongly supportive of how we're handling it...."

Mayor Zavodny stated: "But from a legal position, can you charge different customers different rates?"

Chad stated: "I think there's interpretation of, if it's the same circumstance. Some customers, we have six years to recover an unfunded obligation, those that extend we have twenty years to recover. So, I'm not a lawyer, I would have an opinion but it wouldn't be worth much."

Mayor Zavodny stated: "The reason I bring this up is that's been in a lot of the discussions that have been occurring among different people. The other thing that probably scares me, with the timing of it, is we have a presidential election in another year and you can kind of predict what regulations are going to do depending on, who knows who's going to have congress, who knows who's going to have the White House, and we've seen some changes in

coal and how that's treated, there's talk about fracking every day, so the natural gas part is....it's just so volatile, how can NPPD really know how those things are going to go?"

Chad stated: "There's a couple points from your chair that I think will be helpful to understand. 1) A lot of it has to do with your exposure to these regulations, and with us having 42% carbon free, the national average is 31%, the Midwest average is even less than that, we already have some protection because we don't have all of our eggs in coal. These regulations just aren't an NPPD regulation, this is an industry regulation, so the old saying all boats rise with the rising tide, so energy costs as a whole will probably go up. Now, all things being equal, the impact to NPPD and our rate payers should be less than the average because we don't have the exposure like the average utility mix which is 31% and in the Midwest even less than that."

Mayor Zavodny stated: "Do you want to explain to me how you all of a sudden have unfunded health care obligations?"

Chad stated: "We have a plan for our unfunded obligations. We deferred the recovery of those costs because we figured we had more time to recover those costs. Our plan was on a pace to recover all of those obligations when the last one was due which was in 2033 I think. So, once it was clear that not all of these customers that realized the benefits of this obligation were on the same path as that plan, it begged the question, "What's fair and reasonable?", and that was the gist of the rate hearing. Some say it's not fair, about an equal amount said "Yes, this is fair." These were benefits that were received by all consumers looking backwards and it's a matter of recovering those costs."

Mayor Zavodny stated: "That was a really good spiel; that was a good spin. I'm giving you credit for that one. But we see, that if we're not committed, you're going to get ours over the six years left in our contract."

Chad stated: "Everyone's going to pay their share; some are going to pay on 6 years, some are going to pay on 20 years. Nobody's going to pay any more, nobody's going to pay any less."

Mayor Zavodny stated: "From a rate payer, forget my position as Mayor, it's like we have no control over those expenses; we have no control over what they pay their high executives and your way to get it is to pass it to us, and then, because this is where this chair gets to be problematic, we get yelled at if we have to increase because we're getting an increase and we have people on fixed income; you're not hearing that."

Chad stated: "Oh we have a retail division where we serve 90,000 customers and we hear all that. We recognize full heartedly, not only is NPPD in a competitive environment from a Wholesale supply standpoint, but we're committing to a contract of over twenty years of which we need to perform from a cost standpoint. We fully recognize the impact we have on your costs of which your rate payers pay and we are very sensitive to managing all of them in a fair manner and maybe that's not always a popular decision."

Mayor Zavodny stated: "Whoever you report back to, make sure tomorrow they're clear that you earned your pay tonight."

Chad stated: "We recently went through an analysis for the Loup Hydro Contract in Columbus. What we realized is we have new pricing information that we use in the modeling in the analysis, so what we did is we went back and updated our Capacity Purchase model and analysis and instead of using, when we ran the model the first time 5 months' worth of market data we have 12 months, and so the impact of this is a positive impact for what we're able to

commit on our Capacity Purchase payment again which starts in 2022. Today you're paid \$2.80 a KW month which is currently approximately 8,800 KW x \$2.80 = \$295,680 a year. With this updated pricing information we can justify for a Capacity Purchase payment \$3.65 which is approximately \$385,000 a year. So that's about \$90,000 more a year for the Capacity Purchase payment than what you're receiving today; still a fixed price, but that's what it is worth to us."

Chad stated that they would like to have a decision by the end of the year; that would be preferred.

The outside steps on the Wolfe Building at the NW corner of 4<sup>th</sup> & "E" Streets were discussed. According to measurements it appears that the property line is at the face of the building so the outside steps on the south side are actually on City property. Mark S. Champion, AIA Architect, of Champion Olson Architects, Lincoln, NE was present for the discussion. Mark asked if they needed an easement for that as he assumes it would be grandfathered in. Mark stated that accessibility is not required for residential property and those would be residential. If they did any commercial space it would be in the old Knights of Columbus space that is accessible. Mark stated: "Those concrete steps coming out, over, and down to the sidewalk are pretty shot. I think we would remove those and come back with a steel frame and steps in the same position. I don't think we would be doing too much with the basement steps; we may or may not use those as residential units. Nothing is finalized yet but it looks like maybe 16 residential units.

City Attorney Egr stated: "My initial reaction is that there's been acquired "a prescriptive easement". Prescriptive easement is that by the passage of time and the use of that property there, there has been an easement created there that flows with the building. I think probably, before we had zoning and things like that, that building was there. I'm initially of the opinion that there's been acquired by the property, and those prescriptive easements follow the property not the person, that there is a prescriptive easement for them and they would not have to acquire an easement from the City for the south side on "E" Street. Now that's a different story on 4<sup>th</sup> Street because that deals with the State, that's State Highway."

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Michelle Longenecker and David McPhillips presented a Power Point Presentation of the brick streets in the downtown area, and brick streets located in other municipalities. Michelle Longenecker stated: "I attended the last meeting that was held in the Library and listened to Al Hottovy and Dawn Danley (of Leo A. Daly) and the Council voted to proceed with the water lines and the resurfacing of "D" Street. So, I went down "D" Street afterwards and looked at it and imagined the scenario of the concrete portion in front of the Fire Station, which makes sense with the heavy equipment, and then adding new brick, which is what Dawn has proposed, on the west end of "D" Street to the intersection. ("D" Street between 6<sup>th</sup> & 5<sup>th</sup> Streets) So, if you think about that, you'll have half a block of concrete, half a block of new brick, and then you've got the old brick, and I'm wondering if that wouldn't look a little piecemealed by adding a third element at this point? Concrete a half block, new brick, and then it flows directly into our heart of the downtown and the core of this intersection, if it wouldn't look disjointed at this point? I know the plan is in about five years, give or take depending on what your sales tax is looking like, to look at the entire downtown area and exclusively develop a comprehensive and cohesive plan and I question if perhaps it wouldn't be wiser or more prudent to include the west end of "D" Street at that point instead of tearing up half a block now and creating more of a disjointed, less cohesive look, piecemeal as it was, at a half a block piece." Mayor Zavodny stated that he was unclear what she was asking. Michelle continued: "Instead of adding new brick on the west end of that "D" Street just to leave it as is and just replace the concrete on the east end in front of the Fire Station which is a necessity. I went down and looked at the street and it's really in remarkably good shape. There's no immediate need from my....I guess I have no expertise, but there doesn't appear to be any immediate need to delve into that particular intersection and the west end of "D" Street here, again I'm talking about in front of Union Bank."

Council member Kroesing stated that he thought some of that had to do with drainage issues in that area. Discussion followed.

Mayor Zavodny stated: "For a moment let's say that I agree with your argument that it can look piecemealed with that, I think long term realistically, if the whole project the comprehensive one gets done, I'm hard pressed to believe whoever's sitting in these chairs at that time is going to spend the extra money to put the old bricks back. I think it gets cost prohibitive. I'm unclear on what the objection is to trying to put in some of the new brick to see what it would look like, to try to match it, to see how it holds up; now would be a great time to do that to see if we could make that work well."

Michelle stated: "I've thought about that too, but what would be the real purpose to tear up the street at this point? If it's not an immediate concern why spend the money and do that now if you're not going to do the project as a whole? I felt like maybe the Council felt the need to do something."

Mayor Zavodny stated: "And that's what I was getting at. Are you concerned about the money piece?"

Michelle stated: "No, not even that, it's just to tear it up at this point doesn't seem to be wise, because you're adding a third element and it's again a piecemeal appearance."

Mayor Zavodny stated: "We have piecemeal now because everything that breaks they have to tear it up and try to fix it. We have a downtown with a whole lot of Band-Aids on it."

Michelle stated: "I know we do. I don't see this as an answer to it I guess, just tearing up half a block."

Council member Kroesing stated: "I see their point and what they're saying; also I don't see any purpose in laying that half a block of new brick and then somebody getting a wild hair and saying "I don't like it, let's tear it out" and let's do something else. You're talking adding on more expense to our already limited project. If we're going to do that street, half-way, I'd like to see it done all the way. I'd like to see it comparable from that corner going to the corner to the east just like it is on west "D" Street, because I haven't fielded one derogatory comment about west "D" Street and what it looks like." [*"D" Street from 4<sup>th</sup> to 3<sup>d</sup> Street*] So why can't we try and do this block the same way? That's my thoughts."

Mayor Zavodny stated: "So you're saying cement that whole block and end it there?"

Council member Kroesing stated: "Do whatever the fire department needs, I suppose they'll need more concrete than they do bricks, but from the alley west to the corner turn it into what west "D" Street looks like."

Street Supervisor Rodney Rech stated: "Since you had that special meeting I've been contacted from about 10 – 15 people and they anticipated it was going to look like west "D" Street, with the brick on the sidewalk and the brick on the corners. I asked them why they didn't come to the Council Meeting and they said because that's what they anticipated it was going to be, it was going to look like west "D" Street. Getting back to the old brick, we had to tear out some old brick east of the Library (*center of 5<sup>th</sup> Street between "C" and "D" Street – because there was a sink hole there.*) You look down at the brick, they are perfect; they look perfect from the top, but the ones we took out, they broke in half; the bottom half stayed there and the top half came off."

David McPhillips stated: "We do like the aesthetics of the old brick. I do not like the looks of west "D" Street, I think it looks stark and lifeless."

Kirstin Husmann of Union Bank stated: "I love the bricks, I love the way it looks. I am not from David City, but it was definitely an appeal the first time I drove through town and it's this quaint, cozy little town that just has this very warm and welcoming feeling and it seems silly that bricks in the street would have that feeling but its part of it. Now, on the flip side of that, I also don't want a town that's falling apart underneath. If it's possible to keep them, I think it would be nice, but again, if the bricks are in half and it's not possible to even keep them then that's a whole different story. Does anybody know, have any other towns had this issue, or have had part old brick and part new brick?"

Michelle stated: "I called the City of Omaha street department and talked to the Civil Engineer who manages their streets and told him that we were kind of led to believe that they were getting away from the old brick in the old market and he said "*Oh no, we hoard our old bricks. We have an inventory and we dedicate money in the budget every year for a brick rehab program.*" He went on to tell me that there is nothing more durable than the old brick. They have used a combination of colored concrete pavers and new brick in various areas throughout Omaha including the Millard area in crosswalk areas and the colored concrete pavers disintegrate over time. They are more ride-able, smoother ride, but they do not tolerate salt and they disintegrate pretty rapidly. New brick isn't as ride-able but it lasts longer, but neither is as durable as the old bricks from years ago. They saw it as an advantage because, even though the ride is bumpier in the old market area, it slows the traffic in a high pedestrian zone and so they saw it as advantageous. That's their opinion."

Mayor Zavodny stated: "Let's say we did nothing. We know we have to replace water lines, that's the number one priority of this project, has been from day one, so we bore. We are still going to have our Band-Aid stuff if something breaks, tearing stuff up, water mains or

whatever. We are going to have a piecemeal downtown. If you leave the brick you are probably ok because you are not disturbing them. If you have to disturb them then we are probably going to run into some trouble.”

David McPhillip stated: “We can inventory the bricks in front of the Fire Hall and use those for places where we have problems and I would say there is no reason to pull the bricks up. People here think they are in terrible shape but I’m going to provide examples of communities that are vibrant and have bricks that are similar to our streets.” David then provided pictures on the Power Point presentation of Seward, Nebraska saying: “As you know they have the Independence Day celebration, 40,000 people come to this town; it’s televised. That is a community that we should model our downtown around. It is vibrant, it is happening, there are good things there, they are proud of their bricks, and you will see here that their bricks are in no better condition than our bricks are. I do feel that these bricks are valuable assets and should be valued and treasured as part of our Downtown.”

Much discussion followed.

Mayor Zavodny stated: “As we consider the overall project, all of these things have to be considered: drainage, aesthetics, functionality; at this point, to be very honest, I am more interested that we make sure we get the water lines in and that they work and then figure out, whatever the final design, I would like to at least pay homage to the brick in some way, I don’t know how that is. I was hoping that the new brick was a good compromise, I’m losing on that one it seems like from time to time, but OK I can live with that.”

At 8:13 p.m. Mayor Zavodny opened the Public Hearing to consider amending Ordinance No. 1060 – Zoning Ordinances – by adding Mobile Food Units to definitions, adding Section 4.25 Mobile Food Units, and amending Section 5.12.04 – Permitted Temporary use by adding #6 – Mobile Food Units.

This was recommended by the Planning Commission. Discussion followed concerning other areas in David City and it was noted that this only allows Mobile Food Units in the Downtown Commercial District and a Permitted Temporary use permit is required. Some of the Council members stated concerns about that.

There being no further comments from the public, Mayor Zavodny declared the Public Hearing closed at 8:17 p.m.

Council member Rogers introduced Ordinance No. 1236 amending Ordinance No. 1060 – Zoning Ordinances – by adding Mobile Food Units to definitions, adding Section 4.25 Mobile Food Units, and amending Section 5.12.04 – Permitted Temporary use by adding #6 – Mobile Food Units. Mayor Zavodny read Ordinance No. 1236 by title. Council member Kroesing made a motion pass Ordinance No. 1236 on the first reading only. Council member Smith seconded the motion. Voting AYE: Council members Smith, Hotovy, Kobus, Kroesing, and Rogers. Voting NAY: None. Council member Vandenberg was absent. The motion carried and Ordinance No. 1236 was passed on 1<sup>st</sup> reading only as follows:

**ORDINANCE NO. 1236 - Passed on 1<sup>st</sup> reading only**

AN ORDINANCE TO AMEND ZONING ORDINANCE NO. 1060 BY ADDING MOBILE FOOD UNITS TO SECTION 2.02 DEFINITIONS; ADDING SECTION 4.25 MOBILE FOOD UNITS AND AMENDING SECTION 5.12 C-2 DOWNTOWN COMMERCIAL DISTRICT, 5.12.04 PERMITTED TEMPORARY USES, BY ADDING #6 –

MOBILE FOOD UNITS; TO PROVIDE FOR THE REPEAL OF ANY ORDINANCE OR RESOLUTION IN CONFLICT THEREWITH; TO PROVIDE FOR AN EFFECTIVE DATE THEREOF; AND TO AUTHORIZE PUBLICATION IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA, THAT THE FOLLOWING SECTIONS OF ZONING ORDINANCE NO. 1060 BE AMENDED AS FOLLOWS:

ARTICLE 2: DEFINITIONS

Mobile Food Units: A temporary food service establishment that is vehicle-mounted and is designed to be readily movable.

ARTICLE 4: GENERAL PROVISIONS

Section 4.25 Mobile Food Units:

Mobile Food Units are allowed in specific zoning districts; however, these uses shall be required to abide by the following requirements:

1. All units shall be located on vacant lots except in the C-2 Downtown Commercial District where on-street parking may be permitted. On-street parking shall only be allowed during times of operation.
2. All units shall only operate during hours identified on the temporary permit. In no case shall a unit be open for more than one hour after the legal closing time of local bars.
3. All refuse shall be transported off-site unless an agreement with the property owner is submitted to the City identifying an alternate.
4. All units shall not be allowed to use intense lights in order to attract customers.
5. During non-operation hours, these units shall be stored on a vacant lot on personal property or in an enclosed structure.

SECTION 5.12 C-2 DOWNTOWN COMMERCIAL DISTRICT

5.12.04 Permitted Temporary Uses

6. Mobile Food Units

This Ordinance shall be in full force and effect from and after passage, approval and publication or posting as required by law.

PASSED AND APPROVED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Passed on 1<sup>st</sup> reading only

\_\_\_\_\_  
Mayor Alan Zavodny

Passed on 1<sup>st</sup> reading only

\_\_\_\_\_  
City Clerk Joan Kovar

Mayor Zavodny stated: "Discussion concerning the current business climate in David City. Mr. Forney is with us this evening and he is the reason that we have this on the agenda. We had a discussion and he wanted to talk about things that he feels are affecting the Downtown and that maybe the current prevailing thinking needs to be a positive."

Bryan Forney stated: "The way I feel about this, and maybe I'm wrong, this is just an opinion, we're trying to get as many businesses or as many people into David City as possible that way we can get David City back to growing again as far as the businesses around the square and businesses coming into David City. I think that's great for the simple fact that David City will keep growing, we'll have more people moving in, more tax revenue, etc. But I think what bothers me the most is, I think a lot of things need to get settled before comments are put in the paper about our crooked streets, and our bad water mains, and so forth. The reason I'm saying this is, everyone in this room and everyone around that board, knows we have that problem and that's what the meeting's been about all night long is what are we going to do with Uptown, the sewer mains, in front of the Fire Department, and so forth, but the way I feel about it is, and I've heard the comment around town, and I say I'm just speaking what I hear and the way I feel is, with the negativity and things being put in the paper about our streets, our pipes, and so forth, my opinion is that's going to deter people away from David City as far as coming here and opening up a business. The way I look at it is more of a positive outlook on the streets, and the water mains, and what we can do and when we can do it and when the City can do this, I feel you guys around the table, you have made a lot of good decisions and things are going to work. But on the other hand we don't want to deter people from coming into town when they read this in the paper. If I was going to move into a town and open up a business, like I have at the Airport.....OK, well they have crooked streets, they have bad mains, just the mood, the climate is a little heavy; I'm not going to move there, I'm going to move on to the next town, and I guess that's the point I'm trying to get across. There are a lot of us here in David City and others who have the means to open up a business and come into David City and build a new home and so forth. I made that decision to come back to David City and rebuild our old home and start a business; I've done that with my wife and I, people in David City helping me, pushing me to do it, and just us two, and I can fail tomorrow, I guess we all can, but I guess the point I'm trying to get across is it's been my attitude, especially being a left leg amputee, even though I'm at work at 2:00 in the morning on crutches because my stump is bleeding so bad I couldn't put my leg on.....the reason why I am bringing this up is the whole time I've done this and built what I have built at the David City Airport, with your help, is my attitude. And I'm not trying to upset anybody but I have done this with just a positive attitude and if I'm not going to make it, then it's going to be my own fault. But what's helped me get where I am eleven years later, is a positive attitude, a wife that has a positive attitude, and also people in this City that have given me the time and the attitude to push me to do it. So the reason why I am here and I brought this up is none of us are getting any younger and I really feel that the attitude, the positivity, and all of the above needs to play a factor in this. Redoing the uptown or squabbling over a damn brick, come on folks, that's not what it's about. We are a City, we are David City. We're not Seward, we're not Wahoo; we're not anywhere else. We are going to build our City by us and we're going to build this City by people coming into this City. We need new people coming into this City, because none of us are getting any younger, I'm sure as heck aren't. I guess that's my attitude. It kind of bums me out sometimes about what I'm trying to do with my life and what I'm doing for David City, and the business that I'm bringing into David City. Why am I doing this when there's always got to be so much arguing and bickering and negativity? I don't want to upset anyone but that's just how I feel about it and I will say this, I'm very proud of what my wife and I have done. Jim Egr has helped me with paperwork, Joan's helped me; there are certain people that help me. I'm going on seven years on the Better Business Bureau of being on the honor roll. I am staged to be the number top five shop in the State of Nebraska, that's what's on the Internet. I haven't done that by being negative. I've done that by getting up, I put my leg on and I get up and go whether it's thirty below zero or 110° in the shade. I've done this because I've made a dream to me that that's what I wanted to do in my home town in David City and I was born and raised in this town. The way I feel about it is if we are going to work, let's all work together as a team and have a positive attitude and approach everything with a positive attitude. Folks, we have Pilger up there that got blown off the map. What are those people doing today? They are rebuilding that town. We have a town;

it's our town. Let's all agree on it, and I agree with Mr. Kroesing, if the streets need to be torn up and we need to fix the mains, and I agree with Alan, then that's where we need to start. Let's get the pipes fixed, make sure they work, and go from there."

Mayor Zavodny stated: "When Bryon first approached me he said, and I think it's pretty good "We're shooting ourselves in the foot by always having the negative things out front and we probably need to do a little better job of emphasizing the good. This is a good place to raise a family, that's why a lot of people come here and those kinds of things, and we don't hear enough of those stories so I appreciate you saying that."

Citizen Mike Draper stated: "I agree with what he's saying and I think everybody knows what he's talking about; it's too bad. There is such a thing as "Freedom of the Press" but it's too bad that you can't say anything nice about anything. It all has to be derogatory, or how stupid they are, or whatever. It does get a little sickening. It seems that a certain person can say whatever he wants, about anyone he wants, and it gets in the paper."

Citizen Janis Cameron stated: "I think Bryon said it in one sentence, it's all about your positive attitude."

Mayor Zavodny stated: "And that's something you choose. Ben Franklin once said *"People that whine and complain aren't very successful usually"*.

City Clerk Kovar stated: "I think Bryon made a lot of good points; excellent points. If every time you pick up the Banner Press, all you hear is how terrible the water lines are, the streets are breaking up, the City Council are a bunch of idiots, we don't have any guidance in this town.....Why, would you move to David City to start a business? It's exactly like you said, *"No, I'm not going to move to that town, have you read the paper, oh my gosh, they're all a bunch of idiots. I'm going to go down the street and start my business there"*. And yes, as a Community we all have to work together. I admire your work attitude, and it almost breaks me up because when I see how hard you're working it makes me think of my dad who worked every day from 8:00 am to 1:00 a.m. and now the bar (Thomas Tavern, 536 5<sup>th</sup> Street) is sitting there empty; you can't find anybody who wants to open it. Why? Do they not want to move to this town because they don't see a future here? I mean, that's a shame, it really is. So yes, until the citizens of this town decide that we're all in this together, and we're all going to pull and work together and make this town grow.....Yes, if we keep getting negative articles we are going to be nothing because no one will want to move here. We're shooting ourselves in the foot is what we are doing, but....."

Bryon Forney stated: "And that's the way I feel about it; I feel that we're shooting ourselves. We have a beautiful City and we need to make it work."

Mayor Zavodny stated: "I think the message here might be that for too long there's been a silent majority that just, you know, goes home after work and kind of stays out of it. What I'd encourage our citizens to do is, you know, get out there and drown out the white noise of negativity. It's okay to challenge and question, but to indite our whole community that it's backwards and not a good place, you know I am going to fight that every time, and I'll stand against it, and I hope some of you will too."

Craig Reinsch of Olsson Associates was not able to be present but had submitted an agreement for professional services for a water main improvement and replacement project to include a water main utility replacement and improvement design, construction administration and observation at various locations within David City.



## LETTER AGREEMENT FOR PROFESSIONAL SERVICES

October 7, 2015

City of David City  
Attn: Ms. Joan Kovar  
557 North 4<sup>th</sup> Street  
David City, Nebraska 68632

Re: **AGREEMENT FOR PROFESSIONAL SERVICES**  
Water Main Improvement and Replacement – 2016 (the "Project")  
David City, Nebraska

Dear Ms. Kovar:

It is our understanding that the City of David City, Nebraska ("Client") requests Olsson Associates, Inc. ("Olsson") to perform the services described herein pursuant to the terms of this Letter Agreement for Professional Services, Olsson's General Provisions and any exhibits attached hereto (all documents constitute and are referred to herein as the "Agreement") for the Project. This Letter Agreement supersedes the February 25, 2015 document, provided previously due to discussions held with the City Council since that time.

Olsson has acquainted itself with the information provided by Client relative to the Project and based upon such information offers to provide the services described below for the Project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed the General Provisions and any exhibits attached hereto, which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Letter Agreement, and the General Provisions regarding the services to be performed by Olsson, the terms of the General Provisions shall take precedence. Olsson shall provide the following services to Client ("Scope of Services") for the Project:

### **DESIGN SERVICES**

➤ The project is anticipated to include a water main utility replacement and improvement design, construction administration and observation at the following locations within David City, Nebraska:

1. 2<sup>nd</sup> Street from N to O Streets.
2. N. Oak Street from D to E Streets.
3. 5<sup>th</sup> Street from I to F (railroad tracks) Streets.
4. B Street from 11<sup>th</sup> to 13<sup>th</sup> Streets.
5. C Street from 13<sup>th</sup> to 14<sup>th</sup> Streets and 14<sup>th</sup> Street from C to D Streets.
6. Total water main to be replaced is approximately 9 blocks.

Final locations will need to be confirmed as part of the project design and results of topographical survey. View the updated Exhibit 1 for the proposed areas.

## SCHEDULE FOR OLSSON'S SERVICES

Unless otherwise agreed, Olsson would expect to begin performing its services under the Agreement promptly upon your signing.

Anticipated Start Date: November 1, 2015  
Anticipated Completion Date: August 31, 2016

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date, and any milestone dates are approximate only, and Olsson reserves the right to adjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

## COMPENSATION

Client shall pay to Olsson for the performance of the Scope of Services a fixed fee of Forty Three Thousand Five Hundred Eighty Dollars (\$43,580.00), which does not include Construction Phase Services which is provided later on. A breakdown of the fee is provided below:

<u>Description</u>	<u>Design Fee</u>
Project Management and Coordination	\$ 4,790.00
Design Services	\$34,940.00
Bidding Services	\$ 3,850.00
<b>Total Design Services</b>	<b>\$43,580.00*</b>

\*Construction Phase Services shall be completed on a time and expense basis as described below.

Client shall pay to Olsson for the performance of the Scope of Services, the actual time of personnel performing construction observation services only, and all actual reimbursable expenses in accordance with the Labor Rate Schedule and the Reimbursable Expense Schedule attached to this Agreement. Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of invoice date.

If applicable: Olsson's Scope of Services for construction phase (administration, staking, and observation) services will be provided on a time and expense basis not to exceed Thirty Six Thousand Seven Hundred Seventy Five Dollars (\$36,775.00).

The total design and construction observation fee (combined fixed fee and time and expense basis) is Eighty Thousand Three Hundred Fifty Five Dollars (\$80,355.00).

Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of invoice date.

REIMBURSABLE EXPENSE: Olsson's reimbursable expenses for this Project are included in the fees set forth above.

Council member Kroesing stated: "We have a problem here, because "C" Street from 13<sup>th</sup> to 14<sup>th</sup> Street, and 14<sup>th</sup> Street from "C" to "D", Gene Divis (*previous Water Supervisor*) did that within the last year or so before he left and he cut through my whole parkay, and if somebody wants to go through those big trees I've got on the south side of my house again, I'm going to be out there because he cut through the main feeder roots of those huge trees, and thank God most of them made it. Why do we do this in this short of time? It's brand new pipe."

Council member Tom Kobus stated: "I think it's pretty expensive for what they're doing."

Mayor Zavodny stated: "Given the uncertainty in this, my comfort level is at zero at this point and I think we should table this."

Council member Smith made a motion to table consideration of an agreement for professional services for a water main improvement and replacement project to include a water main utility replacement / improvement design, and construction administration and observation at various locations within David City. Council member Rogers seconded the motion. Voting AYE: Council members Kobus, Hotovy, Smith, Kroesing, and Rogers. Voting NAY: None. Council member Vandenberg was absent. The motion carried.

Mayor Zavodny stated that ever since the subject of selecting an emergency notification system for the City came up, he thinks it's a better and better idea. The City could use it to notify citizens of emergency situations, bad water samples, we're flushing mains so you might not want to do laundry, and multiple other uses. It would help us communicate with our community.

City Clerk Kovar presented the following information:

Emergency Notification Software

Company

Nixle	\$3,000 Annually Up to 10,000 citizens Unlimited use	\$250 One Time Installation * (* could possibly waive)
Iris	\$1 per user per year Unlimited use	No set up charges
Blackboard	\$1.92 / recipient / yr. Unlimited use	\$957.13 License Fee Annually

Mayor Zavodny asked: "Does that include e-mails, cell phones, and home phone lines? So everyone would need to register for the alerts, so it is somewhat voluntary. I know about IRIS, I know IRIS works, I like that as the option myself but I don't get a vote. I think we are in a day and age now where something like this is a really good idea."

Council member Hotovy stated: "I can speak for IRIS, it works extremely well, and it's the fastest way to get mass information out. Home phone rings, cell phone rings, then I get a text message, then you get an e-mail. An avenue like this to get that information out there is going to reach a higher percentage than any other avenue, be it radio, television, social media or whatever."

Mayor Zavodny asked: "Can we check what it costs to do multiple; I mean I can see doing one phone if they're charging that way, but I can't see the Schools paying more for all those notifications; there's got to be a deal we can get somehow."

City Attorney Jim Egr stated that the Hospital utilizes IRIS and it's been very good.

Council member Hotovy stated: "I would check into it, because it is an expense. I would nail it down on what it does cost and what all is included in that cost per person. Is that phone and e-mail included in that dollar, or is it just per avenue of notification?"

Mayor Zavodny stated: "Let's do this, let's narrow it down and see if we can get the widest range and what it would cost. I can't imagine that that multiple use can be that cost prohibitive because we get it on so many devices. So for now, I would entertain a motion to table this until we can narrow down exactly what we are going to get for that amount of money."

Council member Hotovy made a motion to table consideration of selecting an emergency notification system for the City/Utilities until which time more information can be obtained concerning the fees and options available. Council member Kobus seconded the motion. Voting AYE: Council members Rogers, Kroesing, Hotovy, Kobus, and Smith. Voting NAY: None. Council member Vandenberg was absent. The motion carried.

Council member Kroesing introduced Ordinance No. 1237 amending Ordinance No. 1040 by deleting vehicles from Article 4. Nuisances. Mayor Zavodny read Ordinance No. 1237 by title.

Council member Kroesing asked: "And this is clean now, correct?"

City Attorney Egr stated: "We hope so, yes. It's like anything else, you have to tweak it sometimes when you find some different things that come along. We have another section that deals with vehicles, ok, but then we kept the vehicles in the nuisance section and the section 6-431 and 6-432 which is a separate section for automobiles gives the Sheriff's Office a little more power."

Council member Kroesing asked: "If he wants to go and enforce this ordinance he can go ahead and do it?"

City Attorney Egr stated: "Yes."

Mayor Zavodny asked: "When it got sent to you, is what we were trying to accomplish, did that make sense?"

City Attorney Egr stated: "Yes, it does."

Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Kobus seconded the motion. Voting AYE: Council members Rogers, Kroesing, Smith, Hotovy, and Kobus. Voting NAY: None. Council member Vandenberg was absent. The motion carried.

Council member Smith made a motion to pass and adopt Ordinance No. 1237 on the third and final reading. Council member Kobus seconded the motion. Voting AYE: Council members Kroesing, Hotovy, Rogers, Smith, and Kobus. Voting NAY: None. Council member Vandenberg was absent. The motion carried and Ordinance No. 1237 was passed on 3<sup>rd</sup> and final reading as follows:

**ORDINANCE NO. 1237**

**AN ORDINANCE AMENDING ORDINANCE NO. 1040 – CODIFYING THE GENERAL ORDINANCES OF THE MUNICIPALITY, BY AMENDING CHAPTER 4 – HEALTH AND SANITATION – ARTICLE 4. NUISANCES; 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 4 – Health & Sanitation; Article 4. Nuisances, is hereby amended to read as follows:

**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:
- (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, 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, 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;
- (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 parts, 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 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)

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City Administrator or City Clerk  
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 or the City Clerk 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 or City Clerk of the City has determined that there exists a nuisance, shall, within the time period given to the owner by the City Administrator or City Clerk 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 Mayor and City Council may grant an extension of time to abate the nuisance if, in their 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 Council or 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 Council or 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 of the Municipality and/or Sheriff of Butler County are directed to enforce this Municipal Code against all nuisances. The jurisdiction of the Mayor, Sheriff, 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. All ordinances or parts of Ordinances in conflict herewith are hereby repealed.

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

PASSED AND APPROVED this 14<sup>th</sup> day of October, 2015.

\_\_\_\_\_  
Mayor Alan Zavodny

\_\_\_\_\_  
City Clerk Joan Kovar

Council member Kroesing made a motion to form a committee to review and update the Municipal Code Book. Council member Hotovy seconded the motion. Voting AYE: Council members Smith, Kobus, Rogers, Hotovy, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried.

Ryan Ruth of Agency One Insurance stated: "The City's Health Policy, the renewal is February 1, 2016. We received a letter July 24<sup>th</sup>, end of July, they are not going to renew the policy as it's currently structured. The main element to that was the Health Reimbursement arrangement that was in there. I would probably recommend looking to move it to a January 1<sup>st</sup> effective date. What that does for our time frame is, by next council meeting I could have proposals ready from different plans. If you would like me to meet with the employees as I have before, I could do that in that time. But in order to have a January 1 effective date, we would need applications and everything completed by December 15<sup>th</sup>, so we have a little time but not a lot."

Mayor Zavodny stated: "That's the reason that he got put on tonight, because our clock is ticking and we have a very short window."

Ryan will work with City Clerk Kovar to acquire the necessary applications and set up a meeting with the employees to discuss options.

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Kobus seconded the motion. Voting AYE: Council members Smith, Kobus, Hotovy, Rogers, and Kroesing. Voting NAY: None. Council member Vandenberg was absent. The motion carried and Mayor Zavodny declared the meeting adjourned at 9:00 p.m.



CERTIFICATION OF MINUTES  
October 14, 2015

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of October 14<sup>th</sup>, 2015; 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.

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Joan E. Kovar, City Clerk