

CITY COUNCIL PROCEEDINGS

July 11, 2012

The City Council of the City of David City, Nebraska, met in open public session in the meeting room of the City Office, 557 N 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on July 5th, 2012 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 members Gary Kroesing, John Vandenberg, Ruddy Svoboda, Mike Rogers, Gary Smith, City Attorney James Egr, Interim City Administrator Joan Kovar and Interim City Clerk Tami Comte. Council member Scribner arrived at 7:05 p.m.

Also present were: Police Chief Anthony McPhillips, Park/Auditorium Supervisor Scott Bales, Mike Bacon of Bacon, Vinton, Matt Rief of Olsson Associates, Phil Lorenzen of D.A. Davidson & Co., Bill Jones with the Nebraska Department of Natural Resources, Joy Fountain, Carol Brehm, Carolyn Yates, Rose McPhillips, Connie Colter, Lillian and Ken Karenka, Dan Robinson, Tim Wollmer, Steve Gaston, Todd Zeilinger, Ryan Nelson, Laura Pelan, Bill & Lisa Buntgen, Russ Heller, Bill Dubs, Jan Sypal and Banner Press Editor Larry Peirce.

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 June 13, 2012 meeting of the Mayor and City Council were approved upon a motion by Council member Vandenberg and seconded by Council member Rogers. Voting AYE: Council members Svoboda, Rogers, Vandenberg, Kroesing and Smith. Voting NAY: None. The motion carried. Council member Scribner was absent.

Mayor Zavodny called for Committee and Officers Reports.

Council member Kroesing asked Park/Auditorium Supervisor Scott Bales about the repairs to the track.

The vandalism to the park restrooms was discussed.

Council member Scribner arrived at 7:05 p.m.

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

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Council member Smith made a motion to approve Payment No. 3 to Gehring Construction & Ready Mix Co., Inc. for Project No. 011-0758 for Street Improvements. Council member Rogers seconded the motion. Voting AYE: Council members Svoboda, Vandenberg, Scribner, Rogers, Smith and Kroesing. Voting NAY: None. The motion carried.



CERTIFICATE OF PAYMENT NO. 3

201 East 2nd Street, Grand Island, Nebraska 68801

Date of Issuance: July 5, 2012

Project: Industrial Drive and 'O' Street Improvements, Municipal Street Improvements, David City, Nebraska, 2012 Project No. 011-0758

Contractor: Gehring Construction & Ready Mix Co., Inc., 5424 West Meadow Drive, Columbus, NE 68601

DETAILED ESTIMATE		
Description	Unit Prices	Extension
See Attached		

PLEASE REMIT PAYMENT TO: Gehring Construction & Ready Mix Co., Inc.

Value of Work Completed and materials stored: \$941,730.30

Original Contract Cost: \$1,104,946.05

Approved Change Orders:

No. 1 \$ 153,466.70

No. _____

No. _____

No. _____

No. _____

Total Contract Cost: \$1,258,412.75

Value of completed work and materials stored: \$941,730.30

Less retained percentage (10 %) \$94,173.03

Net amount due including this estimate \$847,557.27

Less: Estimates previously approved:

No. 1 \$101,027.52	No. 7 _____	No. 13 _____
No. 2 \$465,934.14	No. 8 _____	No. 14 _____
No. 3 _____	No. 9 _____	No. 15 _____
No. 4 _____	No. 10 _____	No. 16 _____
No. 5 _____	No. 11 _____	
No. 6 _____	No. 12 _____	

Total Previous Estimates \$566,961.66

NET AMOUNT DUE THIS ESTIMATE \$280,695.61

The undersigned hereby certifies that the work done and materials delivered have been checked as to quantity and conformance with the plans and specifications and the Contractor, in accordance with the contract, is entitled to payment as indicated above.

OLSSON ASSOCIATES

By:

Date: 7-5-12

cc: Owner, Contractor, File

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Council member Smith made a motion to approve Construction Progress Application No. 2 for the Northwest Drainage Project and payment to Van Kirk Brothers Contracting. Council member Vandenberg seconded the motion. Voting AYE: Council members Vandenberg, Smith, Rogers, Svoboda, Kroesing, and Scribner. Voting NAY: None. The motion carried.

APPLICATION FOR PAYMENT

PROJECT: David City NW Drainage Improvement Project

ENGINEER: Upper Big Blue Natural Resources District

ENGINEER'S PROJECT NO.

TO: (OWNER) City of David City
 557 4th Street
 David City, NE 68632

CONTRACTOR: Van Kirk Bros. Contracting

CONTRACT FOR: Storm Sewer Installation

APPLICATION DATE: 06/29/12 APPLICATION NO.: 2

FOR WORK ACCOMPLISHED THROUGH THE DATE OF: June 29, 2012

CHANGE ORDER SUMMARY:

Application is made for payment, as shown below in connection with the Contract.

The present status of the account is as follows:

ORIGINAL CONTRACT PRICE..... \$ 1,891,889.00
 Net Change by Change Orders
 & Written Amendments..... \$ 14,750.65
 CURRENT CONTRACT PRICE..... \$ 1,906,639.65
 TOTAL COMPLETED & STORED TO DATE..... \$ 650,102.42
 LESS RETAINAGE : 10% 65,010.24
 TOTAL COMPLETED & STORED TO DATE
 LESS RETAINAGE..... \$ 585,092.17
 LESS PREVIOUS APPLICATION FOR
 PAYMENTS..... \$ 455,306.80
 AMOUNT DUE THIS APPLICATION..... \$ 129,785.37

CO #	DATE	ADDITIONS	DEDUCTIONS
1	Mar-12		(39,495.35)
2	Mar-12	\$ 39,500.00	
3	10-Apr	\$ 14,746.00	
TOTAL		\$ 54,246.00	\$ (39,495.35)
NET CHANGE		\$	14,750.65

The undersigned CONTRACTOR certifies that: (1) all previous progress payments received from Owner on account of Work done under the Contract referred to above have been applied to discharge CONTRACTOR'S legitimate obligations incurred in connection with Work covered by prior Applications for Payment numbered ___1_ through ___1___ inclusive; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to OWNER indemnifying OWNER against any such Lien, security interest or encumbrance); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and not defective.

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

CONTRACTOR: Van Kirk Bros. Contracting

By: Melissa Steidemann Date: 6/29/12

Engineer: Upper Big Blue NRD

BY: [Signature] 7/3/12

OWNER: City of David City

BY: [Signature]

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

Council member Smith made a motion to recess the City Council meeting and convene as the Community Development Agency of the City of David City, Nebraska. Council member Kroesing seconded the motion. Voting AYE: Council members Smith, Kroesing, Vandenberg, Scribner, Rogers and Svoboda. Voting NAY: None. The motion carried and Mayor Zavodny declared the meeting in recess.

Mayor Zavodny opened the meeting of the Community Development Agency at 7:15 p.m. Present for the meeting were: Mayor Alan Zavodny, Council members Gary Kroesing, John Vandenberg, Bill Scribner, Ruddy Svoboda, Mike Rogers, Gary Smith, City Attorney James Egr, Interim City Administrator Joan Kovar and Interim City Clerk Tami Comte.

Mike Bacon, of Bacon and Vinton was present to discuss the redevelopment plan amendment. He stated that this was designed to capture the real property taxes on the Timpte expansion. He stated that we are using essentially the base of 1-1-11 and from 1-1-12 for 15 years going forward that increase will be captured and those funds will be used to help pay for paving Industrial Drive and can help pay down what bonds are issued. The plan is built to issue a \$750,000 bond that will be turned over to the City. That would capture approximately a valuation of \$2.7 million at zero percent interest and we have the ability, if there's more value than that, to come in and issue more bonds. Matt Rief, of Olsson Associates, provided a map of the area that is being discussed. This plan has been to the Planning Commission and they recommended it to the City Council.

Council member Smith introduced Resolution No. 1-2012 CDA and moved for its passage and adoption. Council member Kroesing seconded the motion. Voting AYE: Council members Smith, Kroesing, Vandenberg, Scribner, Rogers and Svoboda. Voting NAY: None. The motion carried and Resolution No. 1-2012 CDA was passed and adopted as follows:

COMMUNITY DEVELOPMENT AGENCY

RESOLUTION NO. 1-2012

RESOLUTION OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF DAVID CITY, NEBRASKA, RECOMENDING APPROVAL OF A REDEVELOPMENT PLAN AND MAKING FINDINGS IN REGARD THERETO.

WHEREAS, this Community Development Agency of the CITY OF DAVID CITY, Nebraska ("Agency"), has pursuant to Section 18-2111 of the Nebraska Community Development Law (the "Act"), prepared a redevelopment plan for redevelopment of an area within the city limits of the CITY OF DAVID CITY; and

WHEREAS, the Agency has submitted said redevelopment plan to the Planning Commission of the City for its recommendation;

WHEREAS, the Agency deems it to be in the public interest and in furtherance of the purposes of the Act to implement the redevelopment plan substantially in the form attached hereto;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Agency recommends the adoption and approval of the Redevelopment Plan substantially in the form attached hereto.
2. In compliance with section 18-2114 of the Act, the Agency finds and determines as follows: estimated cost of preparation for redevelopment is minimal, as it is part of the paving construction budget in excess of \$1,000,000; financing of the foregoing costs shall be from a tax increment revenue bond issued in the amount of \$750,000 and from additional funds provided by the City and others; the project real estate is owned by the city who intends to prepare for development and develop the property for infrastructure uses and therefore does not intend to dispose of the property; no families or businesses will be displaced as a result of the project.
3. The Agency has conducted a cost benefit analysis of the project, provided in "Redevelopment Plan Amendment" pursuant to Section 18-2113 of the Act and finds no adverse impact on the city, employers, employees or taxing entities affected by the project.
4. The Agency has determined that the proposed land uses and building requirements in the Redevelopment Area are designed with the general purpose of accomplishing a coordinated, adjusted, and harmonious development of the City and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreational and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of insanitary or unsafe dwelling accommodations, or conditions of blight.

Passed and approved this 11th day of July, 2012.

COMMUNITY DEVELOPMENT
AGENCY OF THE CITY OF
DAVID CITY, NEBRASKA.

BY _____
Chairperson

ATTESTED:

Secretary

Council member Vandenberg made a motion to adjourn the Community Development Agency of the City of David City. Council member Smith seconded the motion. Voting AYE: Council members Smith, Vandenberg, Svoboda, Rogers, Kroesing and Scribner. Voting NAY: None. The motion carried and Mayor Zavodny declared the meeting of the Community Development Agency of the City of David City adjourned at 7:19 p.m.

Mayor Zavodny declared the recessed City Council meeting back in session at 7:19 p.m.

Mayor Zavodny declared the public hearing open at 7:10 to consider a Redevelopment Plan that includes all of Industrial Drive, "S" Street, and "O" Street abutting or lying within a boundary that includes several properties.

The Project Area includes the following properties:

- DAVID CITY 18 15 3 PT OF LOT 8 ANNEX
- DAVID CITY PT OF LOT 8 IN S1/2SE14 .40 AC LAND & LOT SUB DIV ADD (ANNEX)
- DAVID CITY 18 15 3 PT OF LOT 8 IN S1/2SE1/4 4.65 AC ANNEX
- DAVID CITY 18 15 3 PT OF LOT 8 (IN S1/2SE1/4) 1.18 AC
- DAVID CITY 18 15 3 PT NE1/4SW1/4 ANNEXED 1.75 AC
- DAVID CITY LOT 1 BLK 2 SCHMIDS ADD
- DAVID CITY LOTS 7 & 8 & N 22.6' OF LOT 6 BLK 2 SCHMIDS ADD
- DAVID CITY LOT 2 BLK 2 SCHMIDS ADD
- DAVID CITY LOT 3 BLK 2 SCHMIDS ADD
- DAVID CITY S 103' OF LOT 6 BLK 2 SCHMIDS ADD
- DAVID CITY LOT 4 (137.86' X 200'), N 20' OF E 200' OF OL A & LOT 5 BLK 2 SCHMIDS ADD
- DAVID CITY OL A OF 1993 REPLAT OF LOTS 1-5 (LESS N 20' OF THE E 200') BLK 3 SCHMIDS ADD
- DAVID CITY 18 15 3 LOT 7 BLK 3 SCHMIDS ADD
- DAVID CITY LOT 8 IN 1993 REPLAT OF LOTS 1-5 BLK 3 SCHMIDS ADD
- DAVID CITY LOTS 3-6 IN 1993 REPLAT OF LOTS 1-5 BLK 3 SCHMIDS ADD
- DAVID CITY LOTS 2 & 3 SYPALS SUBDIV
- DAVID CITY PT LOT 4 SYPALS SUBDIV
- DAVID CITY PT OF LOT 4 SYPALS SUBDIV
- DAVID CITY LOT 1 IN 1993 REPLAT OF LOTS 1-5 BLK 3 SCHMIDS ADD AND TRACT IN PT SE1/2SW1/4
- DAVID CITY LOT 1 SYPALS SUBDIV
- DAVID CITY 18 15 3 PT SE1/4SW1/4 SCHMIDS ADD
- DAVID CITY 18 15 3 PT LOT 2 BLK 1 PT SE1/4SW1/4 SCHMIDS ADD
- DAVID CITY 18 15 3 PT SE1/4SW1/4 SCHMIDS ADD
- A tract of land located in the E ½ of the SW ¼ of Section 18 T15N R3E of the 6th P.M., Butler County, Nebraska, described as follows: Beginning at the northwest corner of the E ½ of said SW ¼ ; thence easterly, 979.92 feet, on the north line of said SW ¼ ; thence southerly, 657.35 feet, parallel with the westerly right-of-way line of Nebraska Highway No. 15, to a point on the north line of Schmid's Addition of David City; thence westerly, 330 feet, more or less, on the north line of said Schmid's Addition, to a point on the northerly extension of the east line of Block 1 of said Schmid's Addition; thence southerly,

866.27 feet, to the southeast corner of the north 70 of Lot 8 of said Block 1; thence westerly, 393.54 feet, parallel with the west line of said Block 1, to a point on the north line of said Schmid's Addition; thence westerly, 254 feet, to the southwest corner of the N ½ of the NE ¼ of said SW ¼ ; thence northerly, 658.98 feet, to the Point of Beginning, containing 22.64 acres, more or less.

- All of Lots 1, 3, 4, 5, 6, and 7; the south 73 feet of Lot 8; the west 254 feet of the north 70 feet of Lot 8; the west 254 feet of Lots 9, 10, 11, 12, and 13; and that portion of vacated S Street lying north of and adjacent to Lot 13; all in Block 1, Schmid's Addition to David City, Butler County, Nebraska, containing 16.70 acres, more or less.

Mayor Zavodny declared the public hearing closed at 7:20 p.m.

Council member Kroesing introduced Resolution No. 12-2012 and moved for its passage and adoption. Council member Rogers seconded the motion. Voting AYE: Council members Kroesing, Rogers, Vandenberg, Scribner, Smith and Svoboda. Voting NAY: None. The motion carried and Resolution No. 12-2012 was passed and adopted as follows:

RESOLUTION NO. 12-2012

RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, APPROVING A REDEVELOPMENT PLAN; MAKING FINDINGS WITH REGARD TO SUCH PLAN AND APPROVING OTHER ACTION THEREON.

WHEREAS, the City of David City, Nebraska a municipal corporation has determined it to be desirable to undertake and carry out urban redevelopment projects in areas of the City which are determined to be substandard and blighted and in need of redevelopment; and

WHEREAS, Sections 18-2101 through 18-2153, Reissue Revised Statutes of Nebraska, as amended (the "Act"), prescribes the requirements and procedures for the planning and implementation of redevelopment projects; and

WHEREAS, The City has previously declared an areas of the City to be substandard and blighted and in need of redevelopment pursuant to the Act; and

WHEREAS, The Community Development Agency, has prepared a Redevelopment Plan Amendment pursuant to Section 18-2111 of the Act:

NOW, THEREFORE, be it resolved by the Mayor and City Council of the City of David City, Nebraska:

1. The Redevelopment Plan Amendment as contained in the form attached to this Resolution as Exhibit A is hereby determined to be feasible and in conformity with the general plan for the development of the City of David City as a whole and the Redevelopment Plan is in conformity with the legislative declarations and determinations set forth in the Act;

2. The Mayor and City Council specifically find, as follows:

- (a) The project described in the redevelopment plan amendment attached thereto, would not be economically feasible without the use of tax-increment financing;
- (b) The project would not occur in the Redevelopment Area without the use of tax-increment financing; and
- (c) The costs and benefits of the Project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the governing body and have been found to be in the long term best interests of the community impacted by the project.

3. Approval of the Redevelopment Plan Amendment is hereby approved, ratified and affirmed and the Agency is hereby directed to implement the Redevelopment Plan in accordance with the Act, with such changes and revisions as are determined to be appropriate by the Agency.

4. Pursuant to Section 18-2147 of the Act, any ad valorem tax levied upon real property described herein, shall be divided, for the period not to exceed 15 years after the effective date of the provision, which effective date shall be January 1, 2012 as to the following described real estate, to wit:

INSERT PORTION OF TIMPTE WHERE NEW BUILDING EXISTS.

City of David City, Butler County, Nebraska, Butler County, Nebraska, as follows

- a. That portion of the ad valorem tax which is produced by levy at the rate fixed each year by or for each public body upon the redevelopment project valuation shall be paid into the funds, of each such public body in the same proportion as all other taxes collected by or for the bodies; and
- b. That portion of the ad valorem tax on real property in the redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the Agency to pay the principal of; the interest on, and any premiums due in connection with the bonds, loans, notes, or advances on money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such Agency for financing or refinancing, in whole or in part, a redevelopment project. When such bonds, loans, notes, advances of money, or indebtedness including interest and premium due have been paid, the Agency shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon real property in such redevelopment project shall be paid into the funds of the respective public bodies.

5. The Mayor and Clerk are authorized and directed to execute and deliver, from time to time, to the County Clerk, Treasurer and Assessor, the Notice of Allocation of Taxes with the appropriate description of real estate, as established pursuant to the Redevelopment Plan.

Passed and approved this 11th day of July, 2012.

CITY OF DAVID CITY, BUTLER COUNTY,
NEBRASKA

BY _____
Mayor

ATTEST:

Interim City Clerk

Bill Jones, Floodplain Management Specialist, with the Nebraska Dept. of Natural Resources was present to give a presentation concerning the National Flood Insurance Program. He stated that he was here a while back and gave a presentation on the National Flood Insurance program. Since that time the City has annexed some areas which include the flood plain areas which border the County's jurisdiction. He stated that he has been led to believe that there are some people that have loans pending and are unable to get flood insurance because the community doesn't belong to the program. Participation is a very simple process by passing a Resolution of Intent and adopting floodplain regulations for those areas and making application to the National Flood Insurance Program. There is no cost to the community for doing that but somebody does have to administer the program. Without your participation, insurance isn't available, and from what I understand, the properties can't be sold if banks can't hold the loans in house, they can't be sold on the secondary market and they can't use federal funds for those loans. So, participation is something that you really need to consider.

Council member Kroesing stated that we already have new homes in the flood plain.

Bill Jones stated that whatever is there is there.

Council member Kroesing asked how does the documentation go for something that is already in the flood plain and they are new homes.

Bill Jones stated that the program dates from the initiation of the map and the map is dated August 16, 2011. That's when it became effective. Your program starts when you pass regulations. From that day on then you have to uphold the regulations. FEMA will hold you to it when you come into the program.

Mayor Zavodny said, "So, if they are paying real estate taxes and the assessor has a picture of their property they could use that to establish a date."

Bill Jones said, "What's happening now is that if they aren't elevating, you're not liable for that. For newer homes, when they rate the flood insurance policy, they look at the elevation of the lowest floor. If the lowest floor is low, the rate is much higher than if it's elevated according to regulations. So, it's going to cost more and that could continue without penalty to you. It's going to be a penalty to whoever builds those houses and lives in them because it's never going to go away."

Mayor Zavodny asked how we make sure what those elevations are and make sure that someone doesn't excavate below where they should.

Bill Jones said, "The way that the program is set up is that you have to build one foot above BFE. Your map does not have the elevations included so the Dept. of Natural Resources, upon request, will provide that information for you. So, that means that if someone is building something and we need to know what the BFE is here, our agency will develop that data for you because we have the data to make the map."

Matt Rief, from Olsson Associates, stated that in a lot of communities, the developer hires a surveyor to certify what the finished elevation is. So, you would have to require that builder to hire a surveyor to certify that elevation.

Mayor Zavodny stated that we may have to change the rules for building.

Matt Rief stated that it has to be certified by a professional surveyor. That is the City's requirement to require that developer, when they are issued a building permit, that they have a surveyor that certifies that the finished floor is 1' above.

Bill Jones indicated that the City would want to make certain that they adopt the one mile area of jurisdiction and make sure that it agrees with the County.

Council member Kroesing introduced Resolution No. 13-2012 and moved for its passage and adoption. Council member Scribner seconded the motion. Voting AYE: Council members Scribner, Kroesing, Rogers, Svoboda, Vandenberg and Smith. Voting NAY: None. The motion carried and Resolution No. 13-2012 was passed and adopted as follows:

RESOLUTION NO. 13 – 2012

WHEREAS, certain areas of the City of David City are subject to periodic flooding from excessive rains causing serious damages to property within these areas; and

WHEREAS, relief is available in the form of Federally subsidized flood insurance as authorized by the National Flood Insurance Act of 1968; and

WHEREAS, it is the intent of this City Council to require the recognition and evaluation of flood hazards in all official actions relating to development in the flood plain areas having special flood hazards; and

WHEREAS, this body has the legal authority to adopt flood plain management control measures to reduce future flood losses pursuant to Nebraska Statutes for Second Class Cities.

NOW, THEREFORE, BE IT RESOLVED, that this City Council hereby:

1. Assures the Federal Insurance Administration that it will enact as necessary, and maintain in force for those areas having flood hazards, adequate flood plain management and

control measures with effective enforcement provisions consistent with the Criteria set forth in Section 60.3 of the National Flood Insurance Program Regulations; and

2. Vests the City Clerk with the responsibility, authority, and means to:
 - a. Delineate or assist the Administrator, at his request, in delineating the limits of the areas having special flood hazards on available local maps of sufficient scale to identify the location of building sites
 - b. Provide such information as the Administrator may request concerning present uses and occupancy of the flood plain.
 - c. Cooperate with Federal, State, and local agencies and private firms which undertake to study, survey, map, and identify flood plain areas, and cooperate with neighboring communities with respect to management of adjoining flood plain areas in order to prevent aggravation of existing hazards.
 - d. When received from the Administrator, complete and submit those reports which advise the Administrator on the progress made within the community in the development and implementation of flood plain management measures.
 - e. Upon occurrence, notify the Administrator in writing whenever the boundaries of the community have been modified by annexation or loss of authority to adopt and enforce flood plain management regulations for a particular area. Included in such notification will be a map of the community, suitable for reproduction, which clearly delineates the new or deleted areas.
3. Appoints City Clerk to maintain for public inspection and to furnish upon request a record of elevations (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures located in the special flood hazard areas. If the lowest floor is below grade on one or more sides, the elevation of the floor immediately above must also be recorded.
4. Agrees to take such other official action as may be reasonably necessary to carry out the objectives of the program.

ADOPTED AND PASSED by the City Council of the City of David City, Nebraska this 11th day of July, 2012.

Mayor Alan Zavodny

Attest:

Interim City Clerk Tami Comte

Council member Scribner introduced Ordinance No. 1174.

Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting

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AYE: Council members Smith, Kroesing, Rogers, Svoboda, Scribner and Vandenberg. Voting

NAY: None. The motion carried.

Council member Smith made a motion to pass Ordinance No. 1174 on third and final reading. Council member Kroesing seconded the motion. Voting AYE: Council members Smith, Vandenberg, Kroesing, Rogers, Svoboda and Scribner. Voting NAY: None. The motion carried and Ordinance No. 1174 was passed and adopted as follows:

ORDINANCE NO. 1174

***David City, Nebraska
Ordinance for Emergency Program
and
Regular Program Direct Conversions
60.3(b)***

AN ORDINANCE DESIGNED TO MEET STATE AND FEDERAL REQUIREMENTS FOR PARTICIPATION IN THE NATIONAL FLOOD INSURANCE PROGRAM FOR COMMUNITIES IDENTIFIED AS FLOOD PRONE BUT HAVE NOT RECEIVED DETAILED FLOOD INSURANCE STUDY INFORMATION

SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSES

1.1 STATUTORY AUTHORIZATION

The Legislature of the State of Nebraska has in Sections 31-1001 to 31-1022, R.R.S. 1943 (as amended), assigned the responsibility to local governmental units to adopt floodplain management regulations designed to protect the public health, safety and general welfare. Therefore, the City of David City, Nebraska ordains as follows:

1.2 FINDINGS OF FACT

1.21 Flood Losses Resulting from Periodic Inundation

The flood hazard areas of David City, Nebraska, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base all of which adversely affect the public health, safety and general welfare.

1.22 General Causes of the Flood Losses

These flood losses are caused by: (1) The cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, (2) The occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others, which are inadequately elevated or otherwise unprotected from flood damages.

1.3 STATEMENT OF PURPOSE

It is the purpose of this Ordinance to promote the public health, safety, and general welfare and to minimize those losses described in Section 1.21 by applying the provisions of this Ordinance to:

- 1.31** Restrict or prohibit uses which are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities.
- 1.32** Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.
- 1.33** Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.
- 1.34** Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.

SECTION 2.0 LOCAL ADMINISTRATOR RESPONSIBILITIES

The Zoning Administrator hereby has these added responsibilities and is authorized and directed to enforce all of the provisions of this Ordinance and all other Ordinances of the City of David City, Nebraska now in force or hereafter adopted, related to zoning, subdivision or building codes.

SECTION 3.0 LOCAL ADMINISTRATOR ADDITIONAL RESPONSIBILITIES

The Zoning Administrator shall be appointed to these additional responsibilities by resolution of the Governing Body and his/her appointment shall continue during good behavior and satisfactory service. During temporary absence or disability of the Zoning Administrator, the Governing Body of the City shall designate an acting administrator.

SECTION 4.0 DESIGNATION OF CURRENT FHBM/FIRM

The Governing Body of the City of David City, Nebraska, hereby designates the current Flood Hazard Boundary Map/Flood Insurance Rate Map dated August 16, 2011, as the official map to be used in determining those areas of special flood hazard.

SECTION 5.0 PERMITS REQUIRED

Permits Required: No person, firm or corporation shall initiate any floodplain development or substantial improvement or cause the same to be done without first obtaining a separate permit for development as defined in this Ordinance.

- A. Within special flood hazard areas on the official map, separate floodplain development permits are required for all new construction, substantial improvements and other developments, including the placement of manufactured homes.
- B. Application: To obtain a floodplain development permit, the applicant shall first file an application therefore in writing on a form furnished for that purpose. Every such application shall:

- (1) Identify and describe the development to be covered by the floodplain development permit for which application is made.
- (2) Describe the land on which the proposed development is to be done by lot, block, tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or development.
- (3) Indicate the use or occupancy for which the proposed development is intended.
- (4) Be accompanied by plans and specifications for proposed construction.
- (5) Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.
- (6) Within designated floodplain areas, be accompanied by elevations of the lowest floor, including basement, or in the case of floodproofed non-residential structures, the elevation to which it shall be floodproofed. Documentation or certification of such elevations will be maintained by the Zoning Administrator.
- (7) Give such other information as reasonably may be required by the Zoning Administrator (i.e., require a statement from the applicant that they are aware that elevating or floodproofing structures above the minimum levels will result in premium reduction, especially in the case of non-residential floodproofing when a minus one foot (-1') penalty is assessed at the time of rating the structure for the policy premium.

SECTION 6.0 DEVELOPMENT PERMIT APPLICATIONS REVIEW

The Zoning Administrator shall review all development permit applications to determine if the site of the proposed development is reasonably safe from flooding and that all necessary permits have been received as required by Federal or State Law.

SECTION 7.0 ALL APPLICATIONS REVIEW (See Section 21)

The Zoning Administrator, in reviewing all applications for new construction, substantial improvements, prefabricated buildings, placement of manufactured homes and other development(s) (as defined in Section 21 of this Ordinance) will:

- A. Obtain, review and reasonably utilize, if available, any regulatory flood elevation data and floodway data available from Federal, State or other sources, until such other data is provided by the Federal Insurance Administration in a Flood Insurance Study; and require within special flood hazard areas on the official map that the following performance standards be met:
 - (1) That until a floodway has been designated - No development or substantial improvement may be permitted within the identified floodplain unless the applicant has demonstrated that the proposed development or substantial improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, will not increase the water surface elevation of the 100-year flood more than one (1) foot at any location.

- (2) Residential Construction - New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated at least one foot above the base flood elevation.
 - (3) Non-residential Construction - New construction or substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated at least one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below such a level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the local administrator.
 - (4) Require for all new construction and substantial improvements - That fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- B. Require the use of construction materials that are resistant to flood damage.
- C. Require the use of construction methods and practices that will minimize flood damage.
- D. Require that new structures be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- E. New structures be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- F. Assure that all manufactured homes shall be anchored to resist flotation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with State laws, local building codes and FEMA guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:
- (1) Over-the-top ties be provided at each of the four corners of the manufactured home with two additional ties per side at the intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side.
 - (2) Frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side.
 - (3) All components of the anchoring system be capable of carrying a force of 4,800 pounds.
 - (4) Any additions to manufactured homes be similarly anchored.

- G. Assure that all manufactured homes that are placed or substantially improved within special flood hazard areas on the community's official map on sites:
- (1) Outside of a manufactured home park or subdivision;
 - (2) In a new manufactured home park or subdivision;
 - (3) In an expansion to an existing manufactured home park or subdivision; or
 - (4) In an existing manufactured home park or subdivision on which a manufactured home has incurred "*substantial damage*" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at least one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 7.F.
- H. Assure that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within special flood hazard areas on the community's official map that are not subject to the provisions of Section 7.G. be elevated so that either:
- (1) The lowest floor of the manufactured home is at least one foot above the base flood elevation, or
 - (2) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 7.F.
- I. Require that recreational vehicles placed on sites within the identified special flood hazard areas on the community's official map either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements and the elevation and anchoring requirements for "manufactured homes" of this ordinance. A recreational vehicle is ready for highway use if it is on its wheels or jacking system is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

SECTION 8.0 SUBDIVISION APPLICATIONS

The Governing Body of the City shall review all subdivision applications and other proposed new developments (including manufactured home parks or subdivisions) and shall make findings of fact and assure that:

- A. All such proposed developments are consistent with the need to minimize flood damage.
- B. Subdivision proposals and other proposed new developments (including proposals for manufactured home parks and subdivisions), greater than five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals regulatory flood elevation data in special flood hazard areas.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.
- D. All public utilities and facilities are located so as to minimize or eliminate flood damage.

SECTION 9.0 WATER AND SEWAGE SYSTEMS

New and replacement water and sewage systems shall be constructed to eliminate or minimize infiltration by, or discharge into floodwaters. Moreover, on-site waste disposal systems will be designed to avoid impairment or contamination during flooding.

SECTION 10.0 STORAGE OF MATERIAL AND EQUIPMENT

The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

SECTION 11.0 FLOOD-CARRYING CAPACITY WITHIN ANY WATERCOURSE

The Governing Body of the City will ensure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained. The City will notify, in riverine situations, adjacent communities and the State Coordinating Office (Nebraska Department of Natural Resources) prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Federal Emergency Management Agency. Moreover, the City will work with appropriate State and Federal agencies in every way possible in complying with the National Flood Insurance Program in accordance with the National Disaster Protection Act of 1973.

SECTION 12.0 VARIANCE PROCEDURES

- 12.1** The City Council/Planning Commission/Board of Zoning Adjustment as established by The City of David City shall hear and decide appeals and requests for variances from the requirements of this Ordinance.
- 12.2** The City Council/Planning Commission/Board of Zoning Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Zoning Administrator in the enforcement or administration of this Ordinance.
- 12.3** Any person aggrieved by the decision of the City Council/Planning Commission/Board of Zoning Adjustment or any taxpayer may appeal such decision to the District Court as provided in Section 23-168, R.R.S. 1943 (for counties); 19-912, R.R.S. 1943 (for municipalities).
- 12.4** In passing upon such applications, the City Council/Planning Commission/Board of Zoning Adjustment shall consider all technical evaluation, all relevant factors, standards specified in other sections of this Ordinance, and;
- 12.41** the danger that materials may be swept onto other lands to the injury of others;
 - 12.42** the danger to life and property due to flooding or erosion damage;
 - 12.43** the susceptibility of proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

- 12.44 the importance of the services provided by the proposed facility to the community;
- 12.45 the necessity to the facility of a waterfront location, where applicable;
- 12.46 the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- 12.47 the compatibility of the proposed use with existing and anticipated development;
- 12.48 the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- 12.49 the safety of access to the property in times of flood for ordinary and emergency vehicles.
- 12.491 the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
- 12.492 the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

12.5 Conditions for Variances

- 12.51 Generally variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (12.52-12.55 below) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- 12.52 Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- 12.53 Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- 12.54 Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances/ resolutions.
- 12.55 The applicant shall be given a written notice over the signature of a community official that (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this Ordinance.

SECTION 13.0 NON-CONFORMING USE

- 13.1 A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance/ resolution, but which is not in conformity with the provisions of this ordinance/ resolution may be continued subject to the following conditions:

13.11 If such use is discontinued for ___ consecutive months, any future use of the building premises shall conform to this Ordinance. The Utility Department shall notify the ___ Zoning Administrator in writing of instances of nonconforming uses where utility services have been discontinued for a period of ___ months.

13.12 Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue as nonconforming uses.

13.2 If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this Ordinance. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

SECTION 14.0 PENALTIES FOR VIOLATION

Violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

Nothing herein contained shall prevent the City of David City, Nebraska or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION 15.0 ABROGATION AND GREATER RESTRICTIONS

It is not intended by this Ordinance to repeal, abrogate or impair any existent easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provision of this Ordinance shall prevail. All other ordinances/resolutions inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency only.

SECTION 16.0 INTERPRETATION

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal, of any other powers granted by state statutes.

SECTION 17.0 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this Ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Ordinance does not imply that areas outside floodplain district boundaries or land uses permitted within

such districts will be free from flooding or flood damage. This Ordinance shall not create liability on the part of the City of David City, Nebraska, or any officer or employee thereof for any flood damages that may result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

SECTION 18.0 SEVERABILITY

If any section, clause, provision or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

SECTION 19.0 APPEAL

Where a request for a permit to develop or a variance is denied by the Zoning Administrator the applicant may apply for such permit or variance directly to the Board of Appeals.

SECTION 20.0 CONFLICTING ORDINANCES/RESOLUTIONS

This Ordinance shall take precedence over conflicting Ordinances/Resolutions or parts of Ordinances/Resolutions. The Governing Body of the City of David City, Nebraska, may, from time to time, amend this Ordinance to reflect any and all changes in the National Flood Disaster Protection Act of 1973. The regulations of this Ordinance are in compliance with the National Flood Insurance Program Regulations as published in Title 44 of the Code of Federal Regulations and the 1983 Nebraska Floodplain Management Act.

SECTION 21.0 DEFINITIONS

Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this Ordinance its most reasonable application.

"Base Flood" means the flood having one percent chance of being equaled or exceeded in any given year.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

"Existing Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is complete before the effective date of the floodplain management regulations adopted by a community.

"Expansion of Existing Manufactured Home Park or Subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Flood" means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) The overflow of inland or tidal waters. (2) The unusual and rapid accumulation of runoff of surface waters from any source.

"Flood Insurance Rate Map (FIRM)" means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium applicable to the community.

"Floodplain" means any land area susceptible to being inundated by water from any source (see definition of "flooding").

"Floodproofing" means any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

"Floodway" means the channel of the river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

"Historic Structure" means any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) By an approved state program as determined by the Secretary of the Interior or (2) Directly by the Secretary of the Interior in states without approved programs.

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

"Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"New Construction" For floodplain management purposes, "new construction" means structures for which the "start of construction commenced on or after the effective date of the floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

"New Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

"100-Year Flood" means the condition of flooding having a one percent chance of annual occurrence.

"Principally Above Ground" means that at least 51 percent of the actual cash value of the structure is above ground.

"Recreational Vehicle" means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projection; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Regulatory Flood Elevation" means the water surface elevation of the 100-year flood.

"Special Flood Hazard Area" is the land in the floodplain within a community subject to one percent or greater chance of flooding in any given year.

"Start of Construction" [for other than new construction or substantial improvements under the coastal Barrier Resources Act (Pub. L. 97-348)] includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building that is principally above ground, as well as a manufactured home, and a gas or liquid storage tank that is principally above ground.

"Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial Improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a

"historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

"Variance" means a grant of relief to a person from the terms of a floodplain management ordinance.

"Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

ADOPTED AND APPROVED by the Governing Body of David City, Nebraska

This 11th day of July, 20 12.

Mayor Alan Zavodny

ATTEST:

(Seal)

Interim City Clerk Tami Comte

Phil Lorenzen, with D.A. Davidson was present to discuss the Bond Anticipation Notes for the Street Improvement Project. He stated that the intent Resolution goes back 60 days from today's date in terms of recapturing any money that you've advanced, because you have advanced some money for the project. He said, "All of the money that you have advanced for the project, in my view, and in visiting with Joan, is money that came from that 2009 bond issue that was intended to pay a portion of these current project costs. Joan and I went over the numbers and we're comfortable with that, so this, again is just kind of a "belt and suspenders" to make sure that you are covered for that recapture."

Council member Kroesing introduced Resolution No. 14-2012 and moved for its passage and adoption. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Smith, Scribner, Svoboda, Rogers and Vandenberg. Voting NAY: None. The motion carried and Resolution No. 14-2012 was passed and adopted as follows:

RESOLUTION NO. 14-2012

BE IT RESOLVED by the Mayor and Council of the City of David City, Nebraska, as follows:

Section 1. The Mayor and Council hereby find and determine that it is necessary and appropriate to declare an official intent to issue tax-exempt bond anticipation notes or bonds by the City and, in addition, the City's reasonable expectations to reimburse certain expenditures with the proceeds of such bond anticipation notes or bonds as proposed to be issued by the City in connection with the construction of certain street improvements and related appurtenant improvements now being or to be constructed in the City of David City, Nebraska.

Section 2. This resolution shall stand as a statement of the official intent of the City under Regulation Section 1.150-2 and for such purpose the following information is hereby given:

- a. A general functional description of the projects for which expenditures may be made and reimbursement from bond anticipation notes or bond proceeds provided is construction of improvements consisting of street improvements and related appurtenant improvements in and for the City of David City, Nebraska, including streets to be improved under authority of Section 66-4,101 Reissue Revised Statutes of Nebraska, 2009 and including streets to be improved under authority of improvement districts created by the City as Street Improvement District Nos. 2011-1, 2011-2, 2011-3, 2011-4, 2011-5, 2011-6, 2011-8, 2011-9, 2011-9, 2012-1, 2012-2 and 2012-3.
- b. The principal amount of notes or bonds expected to be issued by the City for that portion of improvements pertaining to this reimbursement resolution is estimated to be \$750,000.

PASSED AND APPROVED this 11th day of July, 2012.

ATTEST:

Mayor

Interim City Clerk

[SEAL]

Council member Kroesing introduced Ordinance No. 1175 and made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Smith, Kroesing, Rogers, Scribner, Svoboda and Vandenberg. Voting NAY: None. The motion carried.

Council member Smith made a motion to pass Ordinance No. 1175 on third and final reading. Council member Vandenberg seconded the motion. Voting AYE: Council members Smith, Vandenberg, Kroesing, Svoboda, Rogers and Scribner. Voting NAY: None. The motion carried and Ordinance No. 1175 was passed and approved as follows:

ORDINANCE NO. 1175

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF BOND ANTICIPATION NOTES, SERIES 2012B, OF THE CITY OF DAVID CITY, NEBRASKA, OF THE PRINCIPAL AMOUNT OF NOT TO EXCEED SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) FOR THE PURPOSE OF PROVIDING INTERIM FINANCING FOR A PORTION OF THE COSTS OF CONSTRUCTING IMPROVEMENTS IN STREET IMPROVEMENT DISTRICT NOS. 2011-2, 2011-3, 2011-4, 2011-5, 2011-6, 2011-8, 2011-9, 2011-9, 2012-1, 2012-2 AND 2012-3, PENDING THE ISSUANCE OF GENERAL OBLIGATION BONDS; PRESCRIBING THE FORM OF SAID NOTES; AGREEING TO ISSUE GENERAL OBLIGATION STORM WATER SEWER BONDS TO PAY THE NOTES AT MATURITY OR TO PAY THE NOTES FROM OTHER AVAILABLE FUNDS; AND, ENTERING INTO A CONTRACT ON BEHALF OF THE CITY WITH THE HOLDERS OF SAID NOTES.

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

Section 1. The Mayor and City Council hereby find and determine that by Ordinances of the City heretofore adopted, Street Improvement District Nos. 2011-2, 2011-3, 2011-4, 2011-5, 2011-6, 2011-8, 2011-9, 2011-9, 2012-1, 2012-2 and 2012-3 of the City of David City, have heretofore been duly created; that the City's Special Engineers prepared estimates for the cost of construction of improvements in the aforesaid Districts and the City has taken bids for the improvements in the amount of \$1,104,99.05, which construction contract together with engineering, testing and incidental costs, interest to accrue during construction, underwriting, and issuance and miscellaneous costs are estimated by the City to collectively total not less than \$1,325,000; that the construction of said improvements shall commence in accordance with the contract approved by and executed by the City, that the aforesaid improvements are expected to be completed by August 31, 2013; that it is necessary for the City to have funds available to meet its ongoing payment obligations under the terms of contract for the cost of the improvements to be constructed relative to the aforesaid District and to provide a portion of the interim financing therefor, it is necessary and advisable that the City now issue its notes in the principal amount of \$750,000 pending the issuance of this City's General Obligation Bonds pursuant to Sections 17-516, 17-520, and, Sections 18-1801 and 18-1802, R.R.S. Neb. 2007, and other applicable Sections; that the City has authority under Section 10-137, Reissue Revised Statutes of Nebraska, 2007 to issue bond anticipation notes for the purpose of providing interim financing for the construction of said improvements; that all conditions, acts and things required by law to exist or to be done precedent to the issuance of Bond Anticipation Notes, Series 2012B, in the amount of \$750,000, to pay a portion of the costs of the aforesaid improvements, the costs of issuance of said notes and a portion of the interest to accrue on said notes, do exist and have been done as required by law.

Section 2. For the purpose of providing interim financing for the costs set out in Section 1 pending the issuance of General Obligation Bonds by the City of David City, there shall be and there are hereby ordered issued bond anticipation notes of the City of David City, Nebraska, to be known as "Bond Anticipation Notes, Series 2012B" of the aggregate principal amount of Seven Hundred Fifty Thousand Dollars (\$750,000) (herein referred to as the "Series

2012B Notes", the "Notes" or the "notes"), consisting of fully registered notes numbered from 1 upwards in the order of issuance, in the denomination of \$5,000 each, or integral multiples thereof, said Notes shall be dated as of date of original delivery and each of said Notes shall bear interest at the rate of not to exceed 0.95% per annum payable on the fifteenth day of February and August in each year, commencing February 15, 2013, with the principal of said Notes to become due and payable as follows:

Principal
Amount
\$750,000

Maturity
August 15, 2014

provided, that the Notes shall bear interest at such lower rate per annum as shall be determined in a written designation (the "Designation") signed by the Mayor of the City and also signed by the City Treasurer (the "Authorized Officers") on behalf of the City and which may be agreed to by D.A. Davidson & Co. (the "Underwriter"), which Designation may also determine or modify the principal amount for each maturity of the Notes all within the following limitations:

(a) the aggregate principal amount of the Notes shall not exceed \$750,000 but may be reduced in principal amount;

(b) the longest maturity of the Notes may not be later than August 15, 2014;

Provided further, however, the City reserves the right to redeem any or all of said notes prior to maturity anytime on or after February 15, 2013, upon not less than thirty days written notice, at par plus accrued interest to the date fixed for redemption. Such notice of call for redemption shall be sufficient if it has been sent to a registered holder of said note or notes by first class mail addressed to the registered address of said registered holder. If less than all of the notes are called and redeemed, such notes shall be called in increments of \$5,000 or integral multiples thereof. If less than all of the principal amount of any outstanding note is called for redemption, in such case upon the surrender of such note called for payment, there shall be issued to the registered owner of said note, without charge therefor, a registered note or notes for the unpaid principal balance in any of the authorized denominations authorized by this ordinance.

The principal of said notes and any interest due on said notes upon maturity or earlier call for redemption shall be payable at the office of City Treasurer, David City, Nebraska, as Paying Agent and Registrar, upon presentation and surrender of the note or notes when due or when called for payment prior to maturity. The payment of interest on said notes, falling due prior to maturity or call for redemption, shall be made by the Paying Agent and Registrar to the registered owners by mailing payment to the address of such registered owner or owners thereof as such address shall appear on the note register maintained by said Paying Agent and Registrar. The record date for each interest payment date (the "Record Date") shall be the 15th day immediately preceding the interest payment date. Payments of interest shall be mailed to the registered owner of each note as of the Record Date for each interest payment date.

Section 3. The Treasurer of the City of David City, Nebraska, is hereby designated as Paying Agent and Registrar for the Bond Anticipation Notes herein ordered issued and is hereby authorized to make payments of interest and principal from funds available for such purposes as provided herein as the same fall due. The Paying Agent and Registrar shall keep and maintain for the City books for the registration and transfer of the Notes. The names and registered addresses

of the registered owner or owners of the Notes shall at all times be recorded in such books. Any Note may be transferred pursuant to its provisions by said Paying Agent and Registrar by surrender of such Note for cancellation, accompanied by a written instrument of transfer, in form satisfactory to said Paying Agent and Registrar, duly executed by the registered owner in person or by his duly authorized agent, and thereupon the Paying Agent and Registrar on behalf of the City will deliver (or send by registered mail to the transferee owner or owners thereof at such transferee owner's or owners' risk and expense), registered in the name of such transferee owner or owners, a new note or notes of the same series, interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the notes by this ordinance, one note may be transferred for several such notes of the same series, interest rate and maturity, and for a like aggregate principal amount, and several such notes may be transferred for one or several such notes, respectively of the same series, interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a note, the surrendered note shall be cancelled and destroyed. All notes issued upon transfer of the notes so surrendered shall be valid obligations of the City evidencing the same obligations as the notes surrendered and shall be entitled to all the benefits and protection of this ordinance to the same extent as the notes upon transfer of which they were delivered. The City and said Paying Agent and Registrar shall not be required to transfer any note during any period from any Record Date until its immediately following interest payment date or to transfer any note called for redemption for a period of 30 days next preceding the date fixed for redemption.

Section 4. Said Notes shall be executed on behalf of the City with the manual or facsimile signatures of the Mayor and Clerk and shall have the City's seal imprinted or impressed on each Note. Said Notes shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The City and the Paying Agent and Registrar shall not be required to transfer any Note during the period from any Record Date to the next following interest payment date transfer any Note called for redemption for a period of 30 days next preceding the date fixed for redemption.

Section 5. Said notes shall be substantially in the following form:

UNITED STATES OF AMERICA
STATE OF NEBRASKA
COUNTY OF BUTLER
CITY OF DAVID CITY, NEBRASKA
BOND ANTICIPATION NOTE
Series 2012B

No. _____

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
	August 15, 2014	_____, 2012	

Registered Owner:

Principal Amount:

KNOW ALL MEN BY THESE PRESENTS: That the City of David City, in the County of Butler, in the State of Nebraska, hereby acknowledges itself to owe and for value received promises to pay to the registered owner shown above and as shown on the registration books of the City on the maturity date shown above, the principal amount shown above in lawful money of the United States of America with interest thereon from the date of original issue shown above to maturity or earlier redemption, at the rate per annum shown above, payable semiannually on February 15 and August 15 of each year, commencing February 15, 2013. The principal of this note and any interest due upon maturity or earlier call for redemption is payable at the office of the Treasurer of the City of David City, as Paying Agent and Registrar, in David City, Nebraska, upon presentation and surrender of the note when due or when called for payment prior to maturity. The payment of interest hereon, falling due prior to maturity or call for redemption, shall be made by the Paying Agent and Registrar to the registered owner by mailing payment to the address of such registered owner hereof as such address shall appear on the note register maintained by said Paying Agent and Registrar.

This note is redeemable at the option of the City prior to maturity anytime on or after February 15, 2013 at par and accrued interest to date fixed for redemption. Notice of call of any note for redemption prior to maturity shall be sufficient if given in writing and mailed by first class mail, postage prepaid, to the registered owner at the address shown on the note register not less than thirty days prior to the date fixed for redemption.

This note is one of an issue of notes numbered from 1 upwards in order of issuance, of the total principal amount of Seven Hundred Fifty Thousand Dollars (\$750,000) in the denomination of \$5,000 or integral multiples thereof, of even date and like tenor herewith, issued by the City of David City for the purpose of providing interim financing to pay a portion of the cost of street improvements and related appurtenant improvements, including the cost of issuance of said notes and a portion of the interest to accrue on said notes, pending the issuance of permanent general obligation bonds under authority of Sections 17-516, 17-520, and, Sections 18-1801 and 18-1802, R.R.S. Neb. 2007, and other applicable Sections, The issuance of this note and the other notes of this issue has been lawfully authorized by ordinance duly passed, signed and published by the Mayor and City Council of said City in strict compliance with Sections 10-137, and 17-913 through 17-925, Reissue Revised Statutes of Nebraska, 2007, and all other applicable laws.

The City agrees that the principal and interest of this note shall be payable from the proceeds of the issuance and sale of its general obligation bonds, the issuance and sale of its bond anticipation notes, or from other monies of the City lawfully available for such purposes.

The City reserves the right to issue additional Bond Anticipation Notes for the purpose of paying the balance of the costs of the projects financed in part by this issue of notes or of other improvement projects of the City, for the purpose of refunding the notes of this issue at or prior to maturity and for the purpose of paying for additional improvements for the City. The ordinance under which these notes are issued constitutes an irrevocable contract between the City and the holders of all of said notes and said contract cannot be changed or altered without the written consent of the holders of seventy-five percent (75%) in principal amount of the notes of this series then outstanding.

AS PROVIDED IN THE ORDINANCE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE ORDINANCE, "DTC"), AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE ORDINANCE TO THE CONTRARY, A PORTION OF THE PRINCIPAL AMOUNT OF THIS NOTE MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE REGISTRAR. DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS NOTE MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE ORDINANCE.

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE REGISTRAR FOR PAYMENT OF PRINCIPAL, AND ANY NOTE ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREFOR IS REGISTERED IN THE NAME OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, DTC OR ITS NOMINEE, HAS AN INTEREST HEREIN.

IT IS HEREBY CERTIFIED AND WARRANTED that all conditions, acts and things required by law to exist or to be done precedent to and in the issuance of this note did exist, did happen and were done and performed in regular and due form and time as provided by law.

IN WITNESS WHEREOF the Mayor and Council of the City of David City, Nebraska, have caused this note to be executed on behalf of the City with the manual or facsimile signatures of the Mayor and the City Clerk and by causing the official seal of the City to be impressed or imprinted hereon, all as of the date of original issue specified above.

CITY OF DAVID CITY, NEBRASKA

Mayor

ATTEST:

Interim City Clerk

(SEAL)

CERTIFICATE OF AUTHENTICATION

This note is one of the notes of the issue designated therein and issued under the provisions of the ordinance authorizing said issue.

TREASURER OF THE CITY OF DAVID
CITY, NEBRASKA
Paying Agent and Registrar

Authorized Signature

(Form of Assignment)

For value received _____
_____ hereby sells, assigns and transfers unto
_____ the within
mentioned note and hereby irrevocably constitutes and appoints
_____, attorney, to transfer the same on the
books of registration in the office of the within-in mentioned Paying Agent and Registrar with full
power of substitution in the premises.

Dated: _____

Registered Owner(s)

Witness: _____

Note: The signature of this assignment must correspond with the name as written on the face of the within-mentioned note in every particular, without alteration, enlargement or any change whatsoever.

Section 6. Each of the Notes shall be executed on behalf of the City with the manual or facsimile signatures of the Mayor and City Clerk and shall have impressed or imprinted thereon the City's seal. The Notes shall be issued initially as "book-entry-only" Notes using the services of The Depository Trust Company (the "Depository"), with one typewritten bond per maturity being issued to the Depository. In such connection said officers are authorized to execute and deliver a letter of representations (the "Letter of Representations") in the form required by the Depository (including any blanket letter previously executed and delivered), for and on behalf of the City, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the Notes. Upon the issuance of the Notes as "book-entry-only" Notes, the following provisions shall apply:

(a) The City and the Paying Agent and Registrar shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which the Depository holds Notes as securities depository (each, a "Bond Participant") or to any person who is an actual purchaser of a Bond from a Bond Participant while the Notes are in book-entry form (each, a "Beneficial Owner") with respect to the following:

(i) the accuracy of the records of the Depository, any nominees of the Depository or any Bond Participant with respect to any ownership interest in the Notes,

(ii) the delivery to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Notes, including any notice of redemption, or

(iii) the payment to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the Notes. The Paying Agent and Registrar shall make payments with respect to the Notes only to or upon the order of the Depository or its nominee, and all such payments shall be valid and effective fully to satisfy and discharge the obligations with respect to such Notes to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated Bond, except as provided in (e) below.

(b) Upon receipt by the Paying Agent and Registrar of written notice from the Depository to the effect that the Depository is unable or unwilling to discharge its responsibilities, the Paying Agent and Registrar shall issue, transfer and exchange Notes requested by the Depository in appropriate amounts. Whenever the Depository requests the Paying Agent and Registrar to do so, the Paying Agent and Registrar will cooperate with the Depository in taking appropriate action after reasonable notice (i) to arrange, with the prior written consent of the City, for a substitute depository willing and able upon reasonable and customary terms to maintain custody of the Notes or (ii) to make available Notes registered in whatever name or names the Beneficial Owners transferring or exchanging such Notes shall designate.

(c) If the City determines that it is desirable that certificates representing the Notes be delivered to the Bond Participants and/or Beneficial Owners of the Notes and so notifies the Paying Agent and Registrar in writing, the Paying Agent and Registrar shall so notify the Depository, whereupon the Depository will notify the Bond Participants of the availability through the Depository of bond certificates

representing the Notes. In such event, the Paying Agent and Registrar shall issue, transfer and exchange bond certificates representing the Notes as requested by the Depository in appropriate amounts and in authorized denominations.

(d) Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of the Depository or any nominee thereof, all payments with respect to such Bond and all notices with respect to such Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the Notes may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the Notes may be delivered in physical form to the following:

(i) any successor securities depository or its nominee;

(ii) any person, upon (A) the resignation of the Depository from its functions as depository or (B) termination of the use of the Depository pursuant to this Section.

(f) In the event of any partial redemption of a Bond unless and until such partially redeemed Bond has been replaced in accordance with the provisions of this Ordinance, the books and records of the Paying Agent and Registrar shall govern and establish the principal amount of such Bond as is then outstanding and all of the Notes issued to the Depository or its nominee shall contain a legend to such effect.

If for any reason the Depository resigns and is not replaced, the City shall immediately provide a supply of printed bond certificates for issuance upon the transfers from the Depository and subsequent transfers or in the event of partial redemption. In the event that such supply of certificates shall be insufficient to meet the requirements of the Paying Agent and Registrar for issuance of replacement Notes upon transfer or partial redemption, the City agrees to order printed an additional supply of certificates and to direct their execution by manual or facsimile signature of its then duly qualified and acting Mayor and City Clerk of said City. In case any officer whose signature or facsimile thereof shall appear on any Bond shall cease to be such officer before the delivery of such Bond (including any bond certificates delivered to the Paying Agent and Registrar for issuance upon transfer or partial redemption), such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of such Note. The Notes shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The Notes shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration and authentication of the Notes, they shall be delivered to the City Treasurer, who is authorized to deliver them to D.A. Davidson & Co. (the "Underwriter"), as the initial purchaser thereof, upon receipt of 99.00% of the principal amount of the Notes plus accrued interest thereon to date of payment of the Notes. The City Treasurer is authorized to deliver the Notes to the Underwriter upon receipt of such purchase price plus accrued interest to date of payment. The Underwriter shall have the right to direct the registration of the Notes and the denominations thereof within each maturity, subject to the restrictions of this Ordinance. The Underwriter and its agents, representatives and counsel (including bond counsel) are hereby authorized to take such actions on behalf of the City as are necessary to effectuate the closing of the issuance and sale of the Notes, including without limitation, authorizing the release of the Notes by the Depository at closing. If no separate written agreement for the sale of the Notes is executed and delivered by and between the City and the Underwriter, this Ordinance shall

constitute the agreement for the sale of the Notes. The City Clerk shall make and certify a transcript of the proceedings of the Mayor and Council with respect to the Notes which shall be delivered to said purchaser.

Section 7. All accrued interest (if any) received from the sale of the Notes shall be applied to pay interest falling due on the Notes on February 15, 2013. Issuance expenses may be paid from the proceeds of the Notes and the Underwriter is hereby authorized to make direct payment of such expenses on behalf of the City. The proceeds of the Notes after deduction of Issuance Expenses shall be deposited into a 2012 Storm Water Sewer Project Fund for payment of costs associated with construction of the improvements as set out in Section 1, hereof.

Section 8. The City hereby covenants with the purchasers and holders of the Notes herein authorized that it will make no use of the proceeds of said issue, including monies held in any sinking fund for the payment of principal and interest on said Notes, which would cause said Notes to be arbitrage bonds within the meaning of Sections 103 and 148 and other related sections of the Internal Revenue Code of 1986, as amended, and further covenants to comply with said Sections 103 and 148 and related sections and all applicable regulations thereunder throughout the term of said issue. The City hereby covenants and agrees to take all actions necessary under the Internal Revenue Code of 1986, as amended, to maintain the tax exempt status (as to taxpayers generally) of interest payable on the Notes. The City hereby designates the Notes as its "qualified tax-exempt obligations" under Section 265 (b)(3)(B)(i)(III) of the Internal Revenue Code of 1986, as amended, and covenants and warrants that it does not reasonably anticipate issuance of tax-exempt notes or other tax-exempt obligations aggregating in principal amount more than \$10,000,000 during calendar 2012, taking into consideration statutory exceptions relating to refunding issues. The City agrees to take all further actions, if any, necessary to qualify the Notes herein authorized as such "qualified tax-exempt obligations," as and to the extent permitted by law.

Section 9. The City's obligations under this Ordinance with respect to any or all of the Notes herein authorized shall be fully discharged and satisfied as to any or all of such Notes and any such Bond shall no longer be deemed to be outstanding hereunder if such Bond has been purchased by the City and canceled or when the payment of the principal of and interest thereon to the respective date of maturity or redemption (a) shall have been made in accordance with the terms thereof or (b) shall have been provided for by depositing with the Paying Agent and Registrar, or with a national or state bank having trust powers or trust company, in trust, solely for such payment (i) sufficient money to make such payment and/or (ii) direct general obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America (herein referred to as "U.S. Government Obligations") in such amount and bearing interest and maturing or redeemable at stated fixed prices at the option of the holder as to principal, at such time or times, as will insure the availability of sufficient money to make such payment; provided, however, that with respect to any Bond to be paid prior to maturity, the City shall have duly called such Bond for redemption and given notice thereof or made irrevocable provisions for the giving of such notice. Any money so deposited with the Paying Agent and Registrar or such bank or trust company may be invested or reinvested in U.S. Government Obligations at the direction of the City, and all interest and income from U.S. Government Obligations in the hands of the Paying Agent and Registrar or such bank or trust company in excess of the amount required to pay principal of and interest on the Notes for which such monies or U.S. Government Obligations were deposited shall be paid over to the City as and when collected.

Section 10. The Mayor and City Council do hereby approve the Preliminary Official Statement with respect to the Notes and the information therein contained, and the Mayor, the City Clerk, or either of them is authorized to approve and deem final the Preliminary Official

Statement when prepared in final form and to approve and deliver a final Official Statement for and on behalf of the City, and said final Official Statement shall be delivered to the Underwriter in accordance with the requirements of Reg. Sec. 240.15c2-12 of the Securities and Exchange Commission.

Section 11. Without in any way limiting the power, authority or discretion elsewhere herein granted or delegated, the Mayor and the City Council hereby authorize and direct all of the officers, employees and agents of the City to carry out, or cause to be carried out, and to perform such obligations of the City and such other actions as they, or any one of them, shall consider necessary, advisable, desirable, or appropriate in connection with this ordinance, and the issuance, sale and delivery of the Notes, including, without limitation and whenever appropriate, the execution and delivery thereof and of all other related documents, instruments, certifications and opinions; and delegates, authorizes and directs the Mayor the right, power and authority to exercise his or her own independent judgment and absolute discretion in determining and finalizing the terms, provisions, form and contents of each of the foregoing. The execution and delivery by the Mayor or by any such other officer, officers, agent or agents of the City of any such documents, instruments, certifications and opinions, or the doing by him or her of any act in connection with any of the matters which are the subject of this ordinance shall constitute conclusive evidence of both the City's and his or her approval of all changes, modifications, amendments, revisions and alterations made therein, and shall conclusively establish his or her absolute, unconditional and irrevocable authority with respect thereto from the City and the authorization, approval and ratification by the City of the documents, instruments, certifications and opinions so executed and the action so taken.

Section 12. The City covenants and agrees that it will take all steps required to complete the improvements described in Section 1 hereof in a manner to allow it to issue and sell its general obligation bonds or other bonds to retire the Notes. The City further covenants and agrees to issue and sell its General Obligation Bonds or other bonds in a sufficient amount and at such times as will enable it to take up and pay off the bond anticipation notes herein ordered issued, both principal and interest, at or prior to maturity, to the extent not paid from other sources.

Section 13. The City hereby reserves the right to issue additional bond anticipation notes for the purpose of paying the balance of the cost of the projects of the City set out in Section 1 hereof, for the purpose of refunding the Notes herein ordered issued at or prior to maturity and for the purpose of paying for additional improvements for the City.

Section 14. In accordance with the requirements of Rule 15c2-12 (the "Rule") promulgated by the Securities and Exchange Commission, the City, being the only "obligated person" with respect to the Notes, agrees that it will provide the following continuing disclosure information to the Municipal Securities Rulemaking Board (the "MSRB") in an electronic format as prescribed by the MSRB:

(a) not later than 9 months after the end of each fiscal year of the City (the "Delivery Date"), financial information or operating data for the City of the type accompanying the audited financial statements of the City entitled "Management's Discussion and Analysis" ("Annual Financial Information");

(b) when and if available, audited financial statements for the City; audited financial information shall be prepared on the basis of generally accepted accounting principles; and

(c) in a timely manner not in excess of ten business days after the occurrence of the event, notice of the occurrence of any of the following events with respect to the Notes:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults, if material;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Notes, or other material events affecting the tax status of the Notes;
- (7) modifications to rights of the holders of the Notes, if material;
- (8) bond calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution, or sale of property securing repayment of the Notes, if material;
- (11) rating changes;
- (12) bankruptcy, insolvency, receivership or similar events of the City (this event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City);
- (13) the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(14) appointment of a successor or additional trustee or the change of name of a trustee, if material.

The City has not undertaken to provide notice of the occurrence of any other event, except the events listed above.

(d) in a timely manner, notice of any failure on the part of the City to provide Annual Financial Information not later than the Delivery Date.

The City agrees that all documents provided to the MSRB under the terms of this continuing disclosure undertaking shall be in such electronic format and accompanied by such identifying information as shall be prescribed by the MSRB. The City reserves the right to modify from time to time the specific types of information provided or the format of the presentation of such information or the accounting methods in accordance with which such information is presented, to the extent necessary or appropriate in the judgment of the City, consistent with the Rule. The City agrees that such covenants are for the benefit of the registered owners of the Notes (including Beneficial Owners) and that such covenants may be enforced by any registered owner or Beneficial Owner, provided that any such right to enforcement shall be limited to specific enforcement of such undertaking and any failure shall not constitute an event of default under the Resolution. The continuing disclosure obligations of the City, as described above, shall cease when none of the Notes remain outstanding.

Section 15. Without in any way limiting the power, authority or discretion elsewhere herein granted or delegated, the Mayor and the City Council hereby authorize and direct all of the officers, employees and agents of the City to carry out, or cause to be carried out, and to perform such obligations of the City and such other actions as they, or any one of them, shall consider necessary, advisable, desirable, or appropriate in connection with this ordinance, and the issuance, sale and delivery of the Notes, including, without limitation and whenever appropriate, the execution and delivery thereof and of all other related documents, instruments, certifications and opinions; and delegates, authorizes and directs the Mayor the right, power and authority to exercise his or her own independent judgment and absolute discretion in determining and finalizing the terms, provisions, form and contents of each of the foregoing. The execution and delivery by the Mayor or by any such other officer, officers, agent or agents of the City of any such documents, instruments, certifications and opinions, or the doing by him or her of any act in connection with any of the matters which are the subject of this ordinance shall constitute conclusive evidence of both the City's and his or her approval of all changes, modifications, amendments, revisions and alterations made therein, and shall conclusively establish his or her absolute, unconditional and irrevocable authority with respect thereto from the City and the authorization, approval and ratification by the City of the documents, instruments, certifications and opinions so executed and the action so taken.

Section 16. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this ordinance.

Section 17. All ordinances, resolutions or orders, or parts thereof, in conflict with the provisions of this Ordinance are to the extent of said conflict hereby repealed.

Section 18. In order to promote compliance with certain federal tax and securities laws relating to the Notes herein authorized (as well as other outstanding bonds) the policy and procedures attached hereto as Exhibit "A" (the "Post-Issuance Compliance Policy and Procedures") are hereby adopted and approved in all respects. To the extent that there is any inconsistency between the attached Post-Issuance Compliance Policy and Procedures and any

City Council Proceedings

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similar policy or procedures previously adopted and approved, the Post-Issuance Compliance Policy and Procedures shall control.

Section 19. This Ordinance shall be published in pamphlet form as provided by law. This Ordinance shall take effect immediately upon its publication in pamphlet form.

PASSED AND ADOPTED this 11th day of July 2012.

CITY OF DAVID CITY, NEBRASKA

Mayor

ATTEST:

City Clerk

(SEAL)

EXHIBIT "A"
POLICY AND PROCEDURES

[SEE ATTACHED]

**Policy and Procedures
Federal Tax Law and Disclosure Requirements for
Tax-exempt Bonds and/or Build America Bonds**

ISSUER NAME: City of David, Nebraska

COMPLIANCE OFFICER (BY TITLE): City Treasurer

POLICY

It is the policy of the Issuer identified above (the "Issuer") to comply with all Federal tax requirements and securities law continuing disclosure obligations for its obligations issued as tax-exempt bonds or as direct pay build America bonds to ensure, as applicable (a) that interest on its tax-exempt bonds remains exempt from Federal income tax, (b) that the direct payments associated with any bonds issued as "build America bonds" are received by the Issuer in a timely manner and (c) compliance with any continuing disclosure obligations of the Issuer with respect to its outstanding bonds.

PROCEDURES

Compliance Officer. Review of compliance with Federal tax requirements and securities law continuing disclosure obligations as generally outlined below shall be conducted by the Compliance Officer identified above (the "Compliance Officer"). To the extent more than one person has been delegated specific responsibilities, the Compliance Officer shall be responsible for ensuring coordination of all compliance review efforts.

Training. The Compliance Officer shall evaluate and review educational resources regarding post-issuance compliance with Federal tax and securities laws, including periodic review of resources published for issuers of tax-exempt obligations by the Internal Revenue Service (either on its website at <http://www.irs.gov/taxexemptbond>, or elsewhere) and the Municipal Securities Rulemaking Board (either on its Electronic Municipal Market Access website ["EMMA"] at <http://www.emma.msrb.org>, or elsewhere).

Compliance Review. A compliance review shall be conducted at least annually by or at the direction of the Compliance Officer. The review shall occur at the time the Issuer's annual audit takes place, unless the Compliance Officer otherwise specifically determines a different time period or frequency of review would be more appropriate.

Scope of Review.

Document Review. At the compliance review, the following documents (the "Bond Documents") shall be reviewed for general compliance with covenants and agreements and applicable regulations with respect to each outstanding bond issue:

- (a) the resolution(s) and/or ordinance(s), as applicable, adopted by the governing body of the Issuer authorizing the issuance of its outstanding bonds, together with any documents setting the final rates and terms of such bonds (the "Authorizing Proceedings"),
- (b) the tax documentation associated with each bond issue, which may include some or all of the following (the "Tax Documents"):
 - (i) covenants, certifications and expectations regarding Federal tax requirements which are described in the Authorizing Proceedings;

- (ii) Form 8038 series filed with the Internal Revenue Service;
 - (iii) tax certificates, tax compliance agreements, tax regulatory agreement or similar documents;
 - (iv) covenants, agreements, instructions or memoranda with respect to rebate or private use;
 - (v) any reports from rebate analysts received as a result of prior compliance review or evaluation efforts; and
 - (vi) any and all other agreements, certificates and documents contained in the transcript associated with the Authorizing Proceedings relating to federal tax matters.
- (c) the Issuer's continuing disclosure obligations, if any, contained in the Authorizing Proceedings or in a separate agreement (the "Continuing Disclosure Obligations"), and
- (d) any communications or other materials received by the Issuer or its counsel, from bond counsel, the underwriter or placement agent or its counsel, the IRS, or any other material correspondence relating to the tax-exempt status of the Issuer's bonds or relating to the Issuer's Continuing Disclosure Obligations.

Use and Timely Expenditure of Bond Proceeds. Expenditure of bond proceeds shall be reviewed by the Compliance Officer to ensure (a) such proceeds are spent for the purpose stated in the Authorizing Proceedings and as described in the Tax Documents and (b) that the proceeds, together with investment earnings on such proceeds, are spent within the timeframes described in the Tax Documents, and (c) that any mandatory redemptions from excess bond proceeds are timely made if required under the Authorizing Proceedings and Tax Documents.

Arbitrage Yield Restrictions and Rebate Matters. The Tax Documents shall be reviewed by the Compliance Officer to ensure compliance with any applicable yield restriction requirements under Section 148(a) of the Internal Revenue Code (the "Code") and timely calculation and payment of any rebate and the filing of any associated returns pursuant to Section 148(f) of the Code. A qualified rebate analyst shall be engaged as appropriate or as may be required under the Tax Documents.

Use of Bond Financed Property. Expectations and covenants contained in the Bond Documents regarding private use shall be reviewed by the Compliance Officer to ensure compliance. Bond-financed properties shall be clearly identified (by mapping or other reasonable means). Prior to execution, the Compliance Officer (and bond counsel, if deemed appropriate by the Compliance Officer) shall review (a) all proposed leases, contracts related to operation or management of bond-financed property, sponsored research agreements, take-or-pay contracts or other agreements or arrangements or proposed uses which have the potential to give any entity any special legal entitlement to the bond-financed property, (b) all proposed agreements which would result in disposal of any bond-financed property, and (c) all proposed uses of bond-financed property which were not anticipated at the time the bonds were issued. Such actions could be prohibited by the Authorizing Proceedings, the Tax Documents or Federal tax law.

Continuing Disclosure. Compliance with the Continuing Disclosure Obligations with respect to each bond issue shall be evaluated (a) to ensure timely compliance with any annual disclosure requirement, and (b) to ensure that any material events have been properly disclosed as required by the Continuing Disclosure Obligation.

Record Keeping. If not otherwise specified in the Bond Documents, all records related to each bond issue shall be kept for the life of the indebtedness associated with such bond issue (including all tax-exempt refundings) plus six (6) years.

Incorporation of Tax Documents. The requirements, agreements and procedures set forth in the Tax Documents, now or hereafter in existence, are hereby incorporated into these procedures by this reference and are adopted as procedures of the Issuer with respect to the series of bonds to which such Tax Documents relate.

Consultation Regarding Questions or Concerns. Any questions or concerns which arise as a result of any review by the Compliance Officer shall be raised by the Compliance Officer with the Issuer's counsel or with bond counsel to determine whether non-compliance exists and what measures should be taken with respect to any non-compliance.

VCAP and Remedial Actions. The Issuer is aware of (a) the Voluntary Closing Agreement Program (known as "VCAP") operated by the Internal Revenue Service which allows issuers under certain circumstances to voluntarily enter into a closing agreement in the event of certain non-compliance with Federal tax requirements and (b) the remedial actions available to issuers of certain bonds under Section 1.141-12 of the Income Tax Regulations for private use of bond financed property which was not expected at the time the bonds were issued.

Mayor Zavodny stated that at the Committee of the Whole meeting the Council was ready to do away with Keno. He stated that over a three to five year period that the City has made some proceeds but there hasn't been anything for the last nine months. He stated that before we discontinue Keno that we should give Todd Zeilinger an opportunity to talk about it a bit.

Todd Zeilinger, representing Zeilinger Keno was present to discuss the Keno Agreement between the City and Zeilinger Keno. Todd Zeilinger said, "I ran the numbers and I was embarrassed to say that it has been nine months since the City received any revenue. But, that being said, the City has gotten money over the last few years. We set this contract up and it probably should have been looked at a few years ago and readjusted to where the City is guaranteed money up front of the monthly sales because right now the City is in the last place. Payouts are set at 74% which leaves roughly 26% left over. 74% doesn't happen all the time. When that doesn't happen, the State gets paid their 2% first, the operators get their 7%, we get our 7% and the City gets whatever is left over." Zeilinger said, "I think we can fix it before we throw it out. I'm willing to change positions with the City because I know how the numbers work. I'm willing to give the City upfront percentage of 7% and then plus they would get whatever is left at the bottom. It should come back around. I hate to kill it because it's not that the sales have been bad, it's that people have been winning. That's just the way it goes, if people don't win they're not going to play. I would propose switching places with the City and I will even make it retroactive to July 1st so the City starts getting a guaranteed 7%."

Todd Zeilinger stated that he would like to try to get Don's Bar approved as a Keno outlet and that would, hopefully, have the sales increased even more.

After much discussion it was decided to try a 6 month trial basis with a new contract stating that the City will receive a guaranteed 7%.

Interim City Administrator Kovar stated that she will return Ryan's Roadhouse Keno application to the Dept. of Gaming for their approval.

Council member Scribner made a motion to table the Park Committee's request for funds for various park projects. Council member Vandenberg seconded the motion. Voting

AYE: Council members Scribner, Vandenberg, Rogers, Kroesing, Svoboda and Smith. Voting NAY: None. The motion carried.

Council member Kroesing introduced Ordinance No. 1176 and made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Smith, Kroesing, Rogers, Scribner, Svoboda and Vandenberg. Voting NAY: None. The motion carried.

Council member Smith made a motion to pass Ordinance No. 1176 on third and final reading. Council member Vandenberg seconded the motion. Voting AYE: Council members Smith, Vandenberg, Scribner, Svoboda, Rogers and Kroesing. Voting NAY: None. The motion carried and Ordinance No. 1176 was passed and adopted as follows:

ORDINANCE NO. 1176

AN ORDINANCE VACATING THAT PORTION OF 14TH STREET FROM THE NORTH SIDE OF "B" STREET TO THE SOUTH SIDE OF "C" STREET, DECLARING SAID VACATION EXPEDIENT FOR THE PUBLIC GOOD, PROVIDING FOR THE FILING OF CLAIMS AND ASCERTAINMENT OF DAMAGES SUSTAINED BY THE OWNERS OF PROPERTY THEREIN, AND PROVIDING FOR PUBLICATION IN PAMPHLET FORM.

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

SECTION 1. That 14th Street from the north side of "B" Street to the south side of "C" Street has not been used or maintained as a street at any time but only designated as such in the original East David City Addition.'

SECTION 2. That a request was received by Tim and Lori Wollmer to vacate 14th Street from the north side of "B" Street to the south side of "C" Street.

SECTION 3. That Tim and Lori Wollmer have recently purchased Lots 1, 4 and 5, Block 12, East David City and Mike and Pam Siroky have purchased Lots 8, 9 and 12, Block 12, East David City.

SECTION 4. That Tim and Lori Wollmer have also purchased all property directly to the East of 14th Street between "B" and "C" Streets.

SECTION 5. That neighboring property owners Mike and Pam Siroky and William Petersen consent to and join in the request to vacate that portion of 14th Street located between the North side of "B" Street to the south side of "C" Street.

SECTION 6. That any citizen of the City or any owner of property therein may file a claim with the City Clerk of David City on or before the 7th day of August, 2012, for any and all damages sustained by the vacation aforesaid.

SECTION 7. That any other ordinance passed and approved prior to the passage, approval, and publication of this ordinance and in conflict with its provisions, is hereby repealed.

SECTION 8. The City of David City, Nebraska, shall have an easement for maintaining all utilities located in the portion of the street herein vacated.

City Council Proceedings

July 11, 2012

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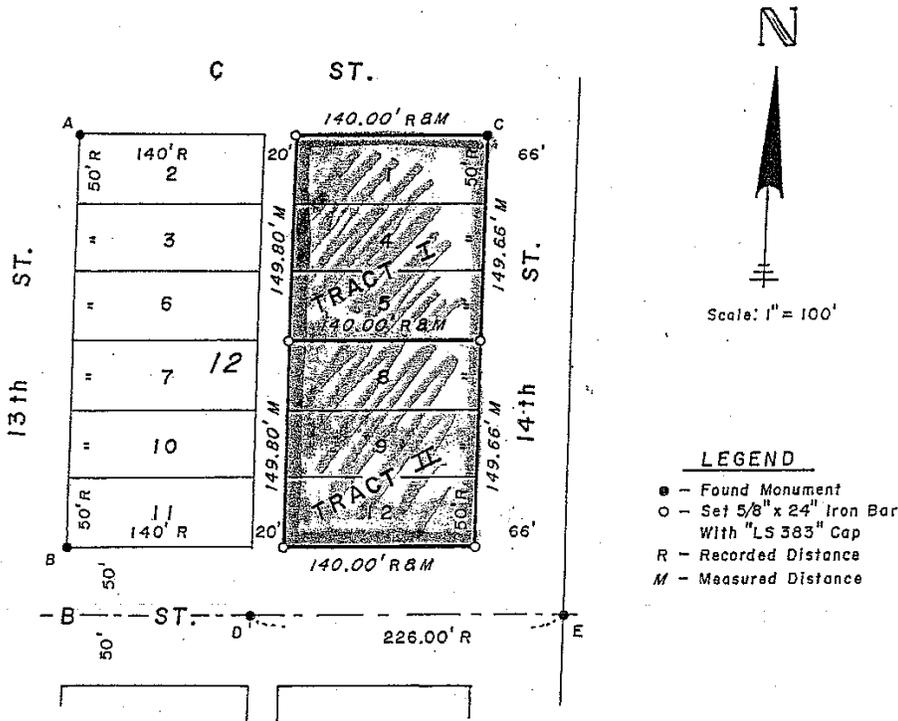
SECTION 9. This ordinance shall be published in pamphlet form and shall take effect and be in full force from and after its passage and approval.

Passed and approved this 11th day of July, 2012.

Mayor Alan Zavodny

Interim City Clerk Tami Comte

BLOCK 12, EAST DAVID CITY,
 BUTLER COUNTY, NEBRASKA



TRACT I DESCRIPTION

Lots 1, 4, and 5, Block 12, East David City, an Addition to David City, Butler County, Nebraska

TRACT II DESCRIPTION

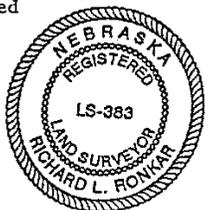
Lots 8, 9, and 12, Block 12, East David City, an Addition to David City, Butler County, Nebraska

FIELD NOTES

This survey was prepared at the request of Tim Wollmer, Atty., David City, Nebraska. Reference: Field Bk. 8 p.46. At A and B, found 1/2" rebars, as recorded by myself. At C, D, and E, found 5/8" iron bars with marked caps, as recorded by myself.

SURVEYORS CERTIFICATE

I, Richard L. Ronkar, a Registered Land Surveyor of the State of Nebraska, certify that this survey was completed by me on December 20, 2011; and that the survey is true and complete as shown, to the best of my knowledge; that all monuments set, together with those found, are of the character and occupy the positions shown thereon, and are sufficient to enable the survey to be retraced



Richard L. Ronkar
 Richard L. Ronkar
 Nebraska L.S. No. 383

Council member Kroesing introduced Ordinance No. 1177 and made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Smith, Kroesing, Rogers, Scribner, Svoboda and Vandenberg. Voting NAY: None. The motion carried.

Council member Smith made a motion to pass Ordinance No. 1177 on third and final reading. Council member Kroesing seconded the motion. Voting AYE: Council members Smith, Vandenberg, Scribner, Svoboda, Rogers and Kroesing. Voting NAY: None. The motion carried and Ordinance No. 1177 was passed and adopted as follows:

ORDINANCE NO. 1177

AN ORDINANCE TO AMEND ZONING ORDINANCE NO. 1060 BY AMENDING ARTICLE 5: ZONING DISTRICTS, SECTION 5.08 R-2 TWO-FAMILY RESIDENTIAL BY ADDING TOWNHOUSE CRITERIA AS A CONDITIONAL USE AND SECTION 5.09 R-3 MULTI-FAMILY RESIDENTIAL BY AMENDING THE REGULATIONS FOR TOWNHOUSES; 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 SECTION 5.08 R-2 TWO-FAMILY RESIDENTIAL DISTRICT AND SECTION 5.09 R-3 MULTI-FAMILY RESIDENTIAL DISTRICT OF ORDINANCE NO. 1060 BE AMENDED AS FOLLOWS:

ARTICLE 5: ZONING DISTRICTS

Section 5.08 R-2 Two-Family Residential

5.08.01 Intent: The purpose of this district is to permit single-family density residential with an increase of density to include duplexes and similar residential development in areas providing all public facilities and supporting facilities to maintain a sound and pleasant environment for the inhabitants.

5.08.02 Permitted Uses.

The following principal uses are permitted in the R-2 District:

1. Single family detached dwellings.
2. Single family attached ~~/Townhomes.~~
3. Two-family, duplex, dwellings.
4. Public and private schools.
5. Publicly owned and operated facilities.
6. Public Services.
7. Family Child Care Home.

5.08.03 Conditional Uses.

The following uses are subject to any conditions listed in this ordinance and are subject to other conditions relating to the placement of said use on a specific tract of ground in the R-2 District as recommended and approved by the Planning Commission:

1. Bed and Breakfasts.
 - a. Guest rooms shall be within the principal residential building only and not within an accessory building.
 - b. Each room that is designated for guest occupancy must be provided with a smoke detector which is kept in good working order.
2. Townhouses/Condominiums:

- a. Each unit is separated by a two-hour fire rated wall from the lowest level and continuing through the roof structure.
 - b. Each unit shall be serviced by separate facilities.
 - c. When each unit is in separate ownership, the accompanying lot shall not be in common ownership with any other unit.
 - d. No more than three units shall be connected in this district.
3. Churches, temples, seminaries, and convents including residences for teachers and pastors.
 4. Private country clubs and golf courses, but not including commercial miniature golf, golf driving ranges, motorized cart tracts, and similar uses not on less than ten acres.
 5. Public utility substations, distribution centers, regulator stations, pumping, treatment facilities, storage, equipment buildings, garages, towers, or similar uses.
 6. Home Occupations (Home Occ. I).
 7. Child Care Center.

5.08.04 Permitted Accessory Uses:

1. Buildings and uses customarily incidental to the permitted uses.
2. Home Occupations (Home Occ. II).
3. Decks, elevated patios either attached or detached.
4. Fences, pursuant to Section 8.03.
5. Temporary buildings incidental to construction work where such buildings or structures are removed upon completion of work.
6. Signs as provided for in Article 7.
7. Parking as provided for in Article 6.
8. Private swimming pool, tennis court, and other recreational facilities in conjunction with a residence.
9. Landscaping as required by Section 8.09.
10. Fireworks stands provided the criteria are met as established by the city through separate ordinances.

5.08.05 Height and Lot Requirements:

The height and minimum lot requirements shall be follows:

	Lot Area (SF)	Lot Width	Front Yard²	Side Yard³	Rear Yard	Max. Height	Max. Lot Coverage
Single-family Dwelling (detached)	7,000	50'	(²)	6'	20'	35'	60%
Two-family Dwelling	7,000	100'	(²)	6'	20'	35'	60%
Single-family attached	4,000	50'	(²)	6'	20'	35'	60%
<u>Townhouses/Condominiums⁴</u>	<u>2000</u>	<u>20'</u>	(³)	<u>6'</u>	<u>20'</u>	<u>35'</u>	<u>60%</u>
	<u>per unit</u>	<u>per unit</u>					
Other Permitted and Conditional Uses	7,000	50'	(²)	6'	20'	45'	60%
Accessory Buildings	-	-	(²)	6'	6'	17'	10% ¹

¹ Provide total area of accessory structure for single family does not exceed 900 sq. ft. and the total lot coverage of all buildings does not exceed 70%

² There shall be a minimum front yard of not less than a depth of 50 feet from a county road right-of-way or property line on a street classified on the City's Major Street Plan as an arterial, and 20 feet from a street classified as a collector, local or private street. For corner lots, (including local and collector streets), for the front yard, which abuts a north-south street right-of-way, the setback requirements shall be 20 feet, and for the front yard, which abuts an east-west street right-of-way, the setback requirement shall be 12 feet.

³ The side yard along the common wall shall be 0 feet. The common wall shall be along the adjoining lot line.

⁴ This applies to Condominiums and Townhouses where there are three (3) more units connected and where there is a minimum of two (2) common walls, otherwise the criteria for single-family attached or two-family dwelling shall apply depending upon the appropriate condition.

⁵ End lots shall be a minimum of 50' in width.

Section 5.09 R-3 Multi-Family Residential

5.09.01 Intent: The purpose of this district is to permit high density residential, including single-family dwellings, two-family dwellings, and multi-family dwelling development in areas providing all public facilities and supporting facilities to maintain a sound and pleasant environment for the inhabitants.

5.09.02 Permitted Uses:

The following principal uses are permitted in the R-3 District:

1. Single family detached dwellings.
2. Two-family, duplex, dwellings.
3. Single family attached dwellings.
1. Publicly owned and operated facilities.
2. Public Services.
3. Family Child Care Home.

5.09.03 Conditional Uses.

The following uses are subject to any conditions listed in this ordinance and are subject to other conditions relating to the placement of said use on a specific tract of ground in the R-3 District as recommended and approved by the Planning Commission:

1. Multiple family dwellings.
2. Townhouses and Condominiums.
 - a. Each unit is separated by a two-hour fire rated wall from the lowest level and continuing through the roof structure.
 - b. Each unit shall be serviced by separate facilities.
 - c. When each unit is in separate ownership, the accompanying lot shall not be in common ownership with any other unit.
 - d. No more than six units shall be connected in this district.
3. Bed and Breakfast.
 - a. Guest rooms shall be within the principal residential building only and not within an accessory building.
 - b. Each room that is designated for guest occupancy must be provided with a smoke detector which is kept in good working order.
4. Churches, temples, seminaries, and convents including residences for teachers and pastors.
5. Hospitals, sanitariums, rest homes, nursing homes, elderly or retirement housing, convalescent homes, other similar institutions, or philanthropic institutions.
6. Commercial recreational areas and facilities such as swimming pools and water parks.
7. Private country clubs and golf courses, but not including commercial miniature golf, golf driving ranges, motorized cart tracts, and similar uses not on less than ten acres.
8. Public utility substations, distribution centers, regulator stations, pumping, treatment facilities, storage, equipment buildings, garages, towers, or similar uses.
9. Home Occupations (Home Occ. I).
10. Child Care Center.
11. Charitable clubs and organizations.

5.09.04 Permitted Accessory Uses:

1. Buildings and uses customarily incidental to the permitted uses.
2. Home Occupations (Home Occ. II).
3. Decks, elevated patios either attached or detached.
4. Fences, pursuant to Section 8.03.
5. Temporary buildings incidental to construction work where such buildings or structures are removed upon completion of work.
6. Signs as provided for in Article 7.
7. Parking as provided for in Article 6.
8. Private swimming pool, tennis court, and other recreational facilities in conjunction with a residence.
9. Landscaping as required by Section 8.09.
10. Fireworks stands provided the criteria are met as established by the city through separate ordinances.

5.09.05 Height and Lot Requirements:

The height and minimum lot requirements shall be follows:

Uses	Lot Area (SF)	Lot Width	Front Yard ³	Side Yard	Rear Yard	Max. Height	Max. Lot Coverage
Single-family Dwelling	7,000	50'	(³)	6'	20'	35'	70%
Single-family Attached	4,000 per unit	50' per unit	(³)	6'	20'	35'	70%
Two-family Dwelling	7,000	100'	(³)	6'	20'	35'	70%
Townhouses/Condominiums ⁴	4,000 per unit	20' per unit ⁶	(³)	6' ⁵	20'	35'	70%
Multi-family Dwelling	1,500 per unit	100'	(³)	(¹)	20'	55' ¹	70%
Other Permitted and Conditional Uses	7,000	50'	(³)	6'	20'	55'	70%
Accessory Buildings	-	-	(³)	6'	6'	17'	10% ²

¹ For Multi-Family units the side yard shall be 10 feet if it is a 3-story structure, and 5 feet additional side yard on each side shall be provided for each story in excess of 3 stories.

² Provide total area of accessory structure for single family does not exceed 900 sq. ft. and the total lot coverage of all buildings does not exceed 70%

³ There shall be a minimum front yard of not less than a depth of 50 feet from a county road right-of-way or property line on a street classified on the City's Major Street Plan as an arterial, and 20 feet from a street classified as a collector, local or private street. For corner lots, (including local and collector streets), for the front yard, which abuts a north-south street right-of-way, the setback requirements shall be 20 feet, and for the front yard, which abuts an east-west street right-of-way, the setback requirement shall be 12 feet.

⁴ This applies to Condominiums and Townhouses where there are three (3) more units connected and where there is a minimum of two (2) common walls; otherwise the criteria for single-family attached or two-family dwelling shall apply depending upon the appropriate condition.

⁵ Where there are ~~three (3) or more~~ units connected the side yard at the ends shall meet this criteria otherwise the side yard setback shall be zero (0) at common walls.

⁶ End lots shall be a minimum of 50' in width.

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

Mayor Alan Zavodny

Interim City Clerk Tami Comte

Council member Kroesing made a motion to rescind a motion made on April 11, 2012 to merge the City Police Department with the Butler County Sheriff's Department as County Attorney Reiter stated that a merger is not allowed. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Smith, Scribner, Vandenberg, Rogers and Svoboda. Voting NAY: None. The motion carried.

Mayor Zavodny stated that the next item on the agenda was Consideration of entering into negotiations for an agreement with Butler County to provide law enforcement services for City of David City. Mayor Zavodny asked City Attorney Egr what this agenda item accomplished.

City Attorney James Egr stated that all the motion does is allows the continuation of discussions and negotiations with the County.

Mayor Zavodny stated that this became more complicated when it became clear that this would have to be handled as an Ordinance.

City Attorney James Egr said, "Procedurally what has to be done is, if a contract is negotiated, then that contract has to come to the Council to adopt that contract for those services. Then, I don't think that you have to have an Ordinance, per se. Our City Ordinance says that the City will provide law enforcement protection, it doesn't say necessarily **how**. Because it says that the mayor **may** appoint a chief, **may** appoint the necessary officers, etc. My thought would be that procedurally you would negotiate a contract, if that's what you want to do, bring it to the Council and see if they want to approve of you executing that contract. Then, if that happens, and there would be law enforcement through the Sheriff's Department, then there needs to be a full examination of the City Ordinances to appeal or amend those that deal with the Police Department because there would no longer be a City Police Department. There's no sense in having that on the books."

Mayor Zavodny stated that he knows that is different than what was discussed at the town hall meeting. Mayor Zavodny said, "Let's go back to the standing of when the Council voted and we had that vote. That is binding insofar as until an Ordinance is changed, that is the law of the City."

City Attorney James Egr said, "That vote that occurred, because there was a Resolution by that Council, at that time, submitted to a vote of the people. I think, at that time, that, if the Council feels that they have a contract that they want to enter into, then, I think, at that same time that you repeal that vote as part of cleaning up everything."

Mayor Zavodny said, "So, it's kind of along the same lines. What we're saying is that is the law of the City right now, that vote is, and this Council would have to vote to undo that."

City Attorney Egr said, "Yes, to repeal that."

Mayor Zavodny said, "That is within their rights to do that?"

City Attorney Egr said, "Yes, that is correct."

Mayor Zavodny asked if that was two separate things. We're going to approve a contract and then repeal that vote because I didn't think that we could do a negative to repeal.

City Attorney Egr said, "You have a right to repeal any Ordinance. That's not a negative vote."

Council member Kroesing said, "All the first part of the Code Book says is that we provide police protection, it does not say how we provide it."

Discussion followed with public input.

Council member Kroesing made a motion to enter into negotiations for an agreement with Butler County to provide law enforcement services for the City of David City. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Smith, Vandenberg and Rogers. Voting NAY: Council members Scribner and Svoboda. The motion carried.

Council member Svoboda made a motion to suspend the pay for City Council members. The motion died for lack of a second.

Council member Svoboda stated that he would like to have City Attorney Egr attend meetings only as requested.

Council member Rogers stated that City Attorney Egr leads us and is available to us any time that we need him. He stated that he would never consider coming to a meeting without Jim. Council member Rogers stated that we would walk into so many law suits without Egr present.

Council member Kroesing stated that if City Attorney Egr was not present that he would not come to the meetings.

Council member Scribner made a motion to table indefinitely consideration of having City Attorney Egr attend meetings only as requested. Council member Rogers seconded the motion. Voting AYE: Council members Scribner, Rogers, Kroesing, Smith and Vandenberg. Voting NAY: None. Council member Svoboda abstained from voting. The motion carried.

Council member Scribner made a motion to go into executive session to discuss a personnel matter. Council member Rogers seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Scribner, Svoboda, Rogers, and Smith. Voting NAY: None. The motion carried.

Mayor Zavodny stated, "Now at 8:44 p.m. we are going into executive session to discuss a park personnel matter." Mayor Zavodny, all of the Council members, City Attorney Egr,

Interim City Administrator Kovar, Park/Auditorium Supervisor Scott Bales and Park Laborer Brian Comte went into executive session at 8:44 p.m.

City Attorney Jim Egr stated that a motion and second was not needed to come out of executive session. Therefore, Mayor Zavodny declared the City Council out of executive session at 9:35 p.m.

There being no further business to come before the Council, Council member Scribner made a motion to adjourn. Council member Kroesing seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Rogers, Svoboda, Scribner, and Smith. Voting NAY: None. The motion carried and Mayor Zavodny declared the meeting adjourned at 9:36 p.m.



CERTIFICATION OF MINUTES

July 11, 2012

I, Tami L. Comte, duly qualified and acting Interim City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of July 11, 2012; 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.

Tami L. Comte, Interim City Clerk