

CITY COUNCIL PROCEEDINGS

June 8, 2011

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 June 2nd, 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, Mike Rogers, Bill Scribner, Ruddy Svoboda, and Gary Smith, City Attorney Tim Wollmer, Interim City Administrator Joan Kovar and Interim Clerk-Treasurer Tami Comte. Council member Vandenberg was absent.

Also present were: Police Chief Anthony McPhillips, Lieutenant Mike Hutchinson, Karyl Hutchinson, Police Officer Marla Schnell, Mark Moseman, Paul Perske, Matt Rief, of Olsson Associates, Butler County Economic Development Director Keith Marvin, Carol Brehm, Mike Draper, Steve Gaston, Joy Fountain, Janis Cameron, Carolyn Yates, Hank Kobza, Ramona Muntz, Gerald Steager, Dana Trowbridge, Jon Holmes, Yvonne Pence, Rebecca Buntgen, Lisa Buntgen, Anna Fichtl, Jill Topil, Dana Vandenberg, Megan Hoeft, Ryan Nelson 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.

Council member Vandenberg arrived at 7:02 p.m.

The minutes of the May 11, 2011 meeting of the Mayor and City Council were approved upon a motion by Council member Vandenberg and seconded by Council member Svoboda. Voting AYE: Council members Svoboda, Smith, Vandenberg, Scribner, Kroesing and Rogers. Voting NAY: None. The motion carried.

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

Mayor Zavodny called for Committee and Officer Reports. Council member Vandenberg asked what needed to be done to the windows at the library. Mayor Zavodny stated that he would ask Library Director Schmid about that as no one knew the answer. Council member Vandenberg made a motion to approve the committee and officer reports as presented. Council member Smith seconded the motion. Voting AYE: Council members Vandenberg, Smith, Svoboda, Rogers, Scribner and Kroesing. Voting NAY: None. The motion carried.

Council member Kroesing made a motion to advance to agenda item #19 Consideration of the location for the police department. Council member Rogers seconded the motion. Voting

AYE: Council members Rogers, Scribner, Vandenberg, and Kroesing. Voting NAY: Council members Svoboda and Smith. The motion carried.

Council member Kroesing made a motion to table agenda item #19 Consideration of the location for the police department to the special council meeting scheduled for June 22, 2011 at 6 p.m. and to move that meeting to the David City Auditorium at 699 Kansas Street. Council member Rogers seconded the motion. Voting AYE: Council members Scribner, Kroesing, Vandenberg and Rogers. Voting NAY: Council members Smith and Svoboda. The motion carried.

Council member Kroesing made a motion to advance to agenda item #11 Consideration of the application by supporters of Scout Hall, 660 N. 5th Street, to sell permissible fireworks. Council member Vandenberg seconded the motion. Voting AYE: Council members Scribner, Smith, Rogers, Kroesing, Vandenberg and Svoboda. Voting NAY: None. The motion carried.

Council member Kroesing made a motion to approve the application by supporters of Scout Hall, 660 N. 5th Street, to sell permissible fireworks. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Scribner, Smith, Svoboda and Rogers. Voting NAY: None. The motion carried.

Council member Kroesing made a motion to advance to agenda item #12 Consideration of the application by Scott Samek to sell permissible fireworks at 375 Nebraska Street (Amigo's). Council member Vandenberg seconded the motion. Voting AYE: Council members Scribner, Smith, Rogers, Kroesing, Vandenberg and Svoboda. Voting NAY: None. The motion carried.

Council member Smith made a motion to approve the application by Scott Samek to sell permissible fireworks at 375 Nebraska Street (Amigo's). Council member Scribner seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Scribner, Smith, Svoboda and Rogers. Voting NAY: None. The motion carried.

Council member Smith made a motion to advance to agenda item #22 Consideration of the application by Marv's Fireworks to sell permissible fireworks at 1831 N. 4th Street (Slick Graphix). Council member Scribner seconded the motion. Voting AYE: Council members Scribner, Smith, Rogers, Kroesing, Vandenberg and Svoboda. Voting NAY: None. The motion carried.

Council member Smith made a motion to approve the application by Marv's Fireworks to sell permissible fireworks at 1831 N. 4th Street (Slick Graphix). Council member Vandenberg seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Scribner, Smith, Svoboda and Rogers. Voting NAY: None. The motion carried.

Mayor Alan Zavodny declared the public hearing open at 7:15 p.m. relative to any written objections filed against said proposed Street Improvement District No. 2011-2 and asked if anyone wanted to speak on this item. Matt Rief from Olsson Associates stated that this is the paving district for Industrial Drive. Mayor Zavodny stated that he has some frustration with the NW Drainage progress.

Hank Kobza stated that he was opposed to the paving project unless the NW Drainage Project is completed.

Mayor Zavodny stated that he shared those same sentiments with Matt Rief earlier in the day. He stated that in order to have Industrial Drive drain properly that they need to have NW Drainage in place and so forth. He stated that it is a kind of domino effect. Mayor Zavodny also stated that the holdup seems to be in securing the easements.

Mayor Zavodny stated that he received a report from Midwest Right-of-way Service and read a section of the report as follows: "On Siffring Farms, we are still waiting for Duane Siffring and Family to make the decision on a counter offer that they said they are considering. An offer was made to them for \$22,900 which was based on land value of \$10,000 per acre. They are asking for an easement covering 1.39 acres for storm sewer pipe and berm and an additional easement of 3.02 acres will flood periodically in the future. Duane has said that he thinks our land value is very low."

Mayor Zavodny stated that if we can't reach an agreement with Siffrings that we do have an alternative which is supposed to come through where the new car wash is going in so we would have to figure out if we can make that work. Jay Bitner has given us a time line and it's just going too slowly.

Mayor Zavodny stated that we can't let bids until we get the easements. We can't move forward until we know which design we are going with.

Council member Kroesing asked when will we reach the time when we aren't going to be able to do the project any more this year.

Mayor Zavodny stated that we are there.

Matt Rief stated that his recommendation is to pave Industrial Drive in the spring. We will bid the paving project in the fall which is the best time to bid anyway.

Mayor Zavodny declared the public hearing closed at 7:25 p.m.

Council member Scribner made a motion to advance to agenda item #9 Consideration of Ordinance No. 1145 deleting Section 4.25 Swimming Pools in the General Plan. Council member Kroesing seconded the motion. Voting AYE: Council members Scribner, Smith, Rogers, Kroesing, Vandenberg and Svoboda. Voting NAY: None. The motion carried.

Planning Commission member Keith Marvin stated that the Planning Commission would like this section of the General Plan deleted because it is an issue with enforcement. It does not stop the need for a fence around a pool because that is in State Statute.

Council member Scribner made a motion to pass Ordinance No. 1145 on third and final reading. Council member Svoboda seconded the motion. Voting AYE: Council members Smith, Vandenberg, Svoboda, and Scribner. Voting NAY: Council members Rogers, and Kroesing. The motion carried and Ordinance No. 1145 was passed on third and final reading as follows:

ORDINANCE NO. 1145

AN ORDINANCE TO AMEND ZONING ORDINANCE NO. 1060 BY AMENDING ARTICLE 4: GENERAL PROVISIONS BY DELETING SECTION 4.25 SWIMMING POOLS; 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 ARTICLE 4: GENERAL PROVISIONS OF ZONING ORDINANCE NO. 1060 BE AMENDED AS FOLLOWS:

ARTICLE 4: GENERAL PROVISIONS

Section 4.01 Planning Commission Recommendations. Pursuant to Neb. Rev. Stat. §19-901 (R.R.S.1996), it shall be the purpose of the Planning Commission to hold public hearings upon, and make recommendation to the legislative body, regarding proposed amendments to the comprehensive plan and zoning regulations within the jurisdiction of the city.

The Commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the City Council shall not hold its public hearings or take action until it has received the final report of the Commission.

Section 4.02 District Regulations, Restrictions, Boundary Creation. No such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearings shall be given by publication thereof in a paper of general circulation in the city at least one time ten days prior to such hearing.

Section 4.03 Jurisdiction. The provisions of this ordinance shall apply within the corporate limits of the City of David City, Nebraska, and within the territory beyond said corporate limits as now or hereafter fixed, for a distance of one mile, as established on the map entitled "The Official Zoning Map of the City of David City, Nebraska", and as may be amended by subsequent annexation.

Section 4.04 Provisions of Ordinance Declared to be Minimum Requirements. In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the provisions of this ordinance are in conflict with the provisions of any other ordinance or municipal law, the ordinance or municipal law with the most restrictive provisions shall govern.

Section 4.05 Zoning Affects Every Building and Use. No building or land shall hereafter be reused and no building or part thereof shall be erected, moved or altered unless for a use expressly permitted by and in conformity with the regulations herein specified for the district in which it is located, except that any structure damaged or destroyed may be restored if such structure does not involve a non-conforming use.

Section 4.06 Lot.

4.06.01 Every building hereafter erected, reconstructed, converted, moved or structurally altered shall be located on a lot or lot of record and in no case shall there be more than

4.06.02 More than one principal building of a single permitted use may be located upon a lot or tract in the following instances if approved by the zoning administrator. The minimum setback for such buildings shall be ten feet measured from the nearest point of said buildings.

1. Institutional buildings
2. Public or semi-public buildings
3. Multiple-family dwellings
4. Commercial or industrial buildings
5. Home for the aged
6. Agricultural buildings

Section 4.07 Reductions in Lot Area Prohibited. No lot, even though it may consist of one or more adjacent lots of record, shall be reduced in area so that yards, lot area per family, lot width, building area, or other requirements of this ordinance are not maintained. This section shall not apply when a portion of a lot is acquired for a public purpose.

Section 4.08 Obstructions to Vision at Street Intersections Prohibited. On a corner lot, within the area formed by the center line of streets at a distance of 60 feet from their intersections, there shall be no obstruction to vision between a height of 2 ½ feet and a height of eight feet above the grades of the bottom of the curb of the intersecting streets, measured from the point of intersection of the centerline of the streets. At the intersection of major or other arterial streets, the 60-foot distance shall be increased to 90 feet for each arterial leg of the intersection. The requirements of this section shall not be deemed to prohibit any necessary retaining wall. The city administrator has right to increase this distance based upon subdivision design and speed limits along major or other arterials. See "Sight Triangle" as defined in Article 2 of this ordinance.

Section 4.09 Yard Requirements.

- 4.09.01 Yard requirements shall be set forth under the Schedule of Lot, Yard, and Bulk Requirements for each zoning district. Front, side and rear yards shall be provided in accordance with the regulations hereinafter indicated and shall be unobstructed from the ground level to the sky, except as herein permitted.
- 4.09.02 All accessory buildings that are attached to principal buildings (e.g., attached garages) shall comply with the yard requirements of the principal building, unless otherwise specified.
- 4.09.03 The zoning administrator may permit a variation in front yard setbacks to allow new or relocated structures to conform to the average existing setback provided that 1) more than 30 percent of the frontage on one side of a street between intersecting streets is occupied by structures on the effective date of this ordinance, and 2) a minority of such structures have observed or conformed to an average setback line.
- 4.09.04 Any side or rear yard in a residential district which is adjacent to any existing industrial or commercial use shall be no less than 25 feet and shall contain landscaping and planting suitable to provide effective screening.
- 4.09.05 Any yard for a commercial or industrial use located within any Commercial or Industrial Zoning District, which is adjacent to any residential use, or district shall be increased to 40 feet and shall contain landscaping and planting suitable to provide effective screening; except in the Downtown Commercial District. Included in the increased yard, a solid or semi-solid fence or wall at least six feet, but not more than eight feet high shall be provided adjacent to an adjoining residential district unless the adjacent residential district and industrial district are separated by a street right-of-way. The owner or owners of the property in the Commercial and/or Industrial District shall maintain said fence or wall in good condition. Said fencing shall be constructed of

commercially available fencing.

Section 4.10 Through Lots.

- 4.10.01 Through Lots shall follow the following criteria:
1. Where a Through Lot abuts a major thoroughfare, such as Highway 15, etc., and access is made from the other frontage street and access along said thoroughfare is restricted, fences and screening devices shall meet all fence and screening requirements and shall be treated as if they were in a rear yard. The Rear Yard setback for primary and accessory buildings shall follow the prescribed setback within the zoning district.
 2. Where a Through Lot is part of a triple frontage lot and abuts a major thoroughfare, the Rear Yard shall meet the standards of number 1 above, while the other two frontages shall be treated as a Corner Lot with a Front Yard setback and a Street Side Yard setback.
 3. Where a Through Lot occurs, other than along a major thoroughfare, the following shall apply:
 - a. Where all principal structures in the development face the same frontage, then the Rear Yard setback for fences and screening shall be zero feet and all accessory buildings shall meet the prescribed setback within the zoning district. This shall apply similarly at triple frontage lots, provided the remaining two frontages are treated like a typical Corner Lot.
 - b. Where principal structures face different directions along both frontages, the setback for fences and screening to the rear of said structures shall be the same as any prescribed Front Yard setback within the zoning district. This shall apply similarly at triple frontage lots, provided the remaining two frontages are treated like a typical Corner Lot. All accessory buildings in this condition, shall comply with the minimum Front Yard setbacks rather than the reduced setback allowed for accessory buildings.

Section 4.11 Drainage. No building, structure, or use shall be erected on any land, and no change shall be made in the existing contours of any land, including any change in the course, width, or elevation of any natural or other drainage channel, that will obstruct, interfere with, or substantially change the drainage from such land to the detriment of neighboring lands. Anyone desiring to build or otherwise change the existing drainage situation shall be responsible for providing to the City or their designated agent with data indicating that such changes will not be a detriment to the neighboring lands.

Section 4.12 Permitted Obstructions in Required Yards. The following shall not be considered to be obstructions when located in the required yards:

- 4.12.01 *All Yards:* Steps and accessibility ramps used for wheelchair and other assisting devices which are four feet or less above grade which will not exceed minimum requirements of the Americans with Disabilities Act are necessary for access to a permitted building or for access to a lot from a street or alley; chimneys projecting 24 inches or less into the yard; recreational equipment and clothes lines; approved freestanding signs; arbors and trellises; flag poles; window unit air conditioners projecting not more than 18 inches into the required yard; and fences or walls subject to applicable height restrictions are permitted in all yards..
- 4.12.02 *Front Yards:* Bay windows projecting three feet or less into the yard are permitted.
- 4.12.03 *Rear and Side Yards:* Open off-street parking spaces or outside elements of central air conditioning systems.
- 4.12.04 *Double Frontage Lots:* The required front yard shall be provided on each street, unless otherwise provided.

- 4.12.05 *Building Groupings:* For the purpose of the side yard regulation, a group of business or industrial buildings separated by a common party wall shall be considered as one building occupying one lot.

Section 4.13 Projections from Buildings

- 4.13.01 Cornices, eaves, canopies, belt courses, sills, ornamental features, and other similar architectural features may project not more than two feet into any required yard or into any required open space, provided that such required yard or open space meets the current minimum yard standards.
- 4.13.02 As a part of single and two family residences, open uncovered porches or decks no higher than 18 inches above grade of the lot on the side of the structure where such porch or deck is located may be permitted in any required yard for accessibility purposes to principle structure with a required zoning permit.
- 4.13.03 As a part of single and two-family residences, uncovered porches, decks, or ramps needed for medical reasons no higher than the first floor above grade on the side of the building to which they are appurtenant and in no event higher than 30 inches above grade of the lot on the side of the structure where such porch, deck or ramp is located, may be allowed and extend:
1. Three feet into any side yard that otherwise meets minimum side yard requirements provided that the other side yard also meets such minimum side yard requirements and remains free of encroaching structures of any kind; and that said new encroachment meets all separation requirements between structures as determined in the City's Regulations, except gated fences providing access to the rear yard.
 2. Eight feet into a front yard provided that the front yard otherwise meets minimum front yard requirements and provided further 1) that in no event may such porch or deck cover more than 96 square feet of the required front yard or extend beyond the side walls of the building structure, and 2) front decks or porches shall not be higher than 30 inches above ground and no higher than the first floor, except that on homes with front entryways at first floor level but driveway cuts and garage floors at basement level, there may be constructed a veranda-type uncovered deck or porch extending from the front deck or porch over the garage door or doors, which extended area shall be at the same elevation and shall have bracing as required by the zoning administrator, and 3) Covered porches, built of materials of the same or similar nature as the roof of the principal structure may be allowed with eaves not to exceed 12 inches.
 3. Safety railings shall be installed as per the City's Regulations and as approved by the zoning administrator.
 4. One-half of the distance into the required rear yard, but in no event closer than 15 feet to any property line.
- 4.13.04 Provided further, that no railing or other shall be placed around such deck or porch in a rear yard or side yard and no such barrier which interferes appreciably more than 25 percent with the passage of light or air shall be constructed within the required front yard or within five feet of any side yard or 15 feet of any rear yard lot line. Any such deck or porch when located on a lot at the intersection of two streets or a street and an alley, shall comply with the provisions designed to ensure proper sight distances as set forth in this ordinance for fences and hedges. Any side yard on a corner lot may be considered as a front yard for purposes of determining permitted encroachments as provided herein.

Section 4.14 Accessory Buildings and Uses.

- 4.14.01 No accessory building shall be constructed upon a lot for more than six months prior to beginning construction of the principal building. No accessory building shall be

used for more than six months unless the main building on the lot is also being used or unless the main building is under construction; however, in no event shall such building be used as a dwelling unless a certificate of occupancy shall have been issued for such use.

- 4.14.02 No detached accessory building or structure shall exceed the maximum permitted height of accessory structures in the proper zoning district.
- 4.14.03 No accessory building shall be erected in or encroach upon the required side yard on a corner lot or the front yard of a double frontage lot.
- 4.14.04 Detached accessory buildings or structures shall be located no closer to any other accessory or principal building than ten feet.
- 4.14.05 The maximum height of any use shall be decreased to 35 feet when located within 100 feet of any residential district.
- 4.14.06 Detached garages and outbuildings in R-1, R-2, R-3 and RM Districts for storage uses and other structures customary and appurtenant to the permitted uses and detached accessory garages shall be constructed and finished of materials customarily used in residential construction, similar color as the principle structure, and the following:
 - 1. Be constructed of materials that are in good repair,
 - 2. The sidewalls of said building shall not exceed 10 feet in height,
 - 3. Garages shall have an overhang of at least six inches,
 - 4. Garages shall have a maximum width of 36 feet.
- 4.12.07. Regulation of accessory uses shall be as follows:
 - 1. Except as herein provided, no accessory building shall project beyond a required yard line along any street, nor be located between the principle structure and the street in an R-1, R-2, R-3 or R-M District.
 - 2. Service station pumps and pump island may occupy the required yards, provided, however, that they are not less than 15 feet from street lines.
 - 3. Storage of any boat, boat trailer, camp trailer, or other vehicle shall not be permitted in any required yard; except that a boat, boat trailer, camp trailer may be placed on rock or concrete surfacing in a side yard or rear yard.

Section 4.15 Permitted Modifications of Height Regulations.

4.15.01 The height limitations of this ordinance shall not apply to the following, provided that the appropriate yard setbacks are increased by one foot for every two feet in excess of the maximum height requirement for the given zoning district:

Belfries Chimneys Church Spires Conveyors Cooling Towers Elevator Bulkheads Fire Towers Water Towers and Standpipes Flag Poles	Public Monuments Ornamental Towers and Spires Radio/Television Towers less than 125 feet Commercial Elevator Penthouses Silos Smoke Stacks Stage Towers or Scenery Lots Tanks Air-Pollution Prevention Devices
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4.15.02 When permitted in a district, public or semi-public service buildings, hospitals, institutions, or schools may be erected to a height not exceeding 75 feet when each required yard line is increased by at least one foot for each one foot of additional building height above the height regulations for the district in which the building is located.

Section 4.16 Occupancy of Basements and Cellars. No basement or cellar shall be occupied for residential purposes until the remainder of the building has been substantially completed, and any required emergency egress provisions as required per State and life-safety codes.

Section 4.17 Non-Conforming, General Intent. It is the intent of this ordinance to permit lawful non-conformities to continue until they are removed, but not encourage their survival. Such uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. It is further the intent of this ordinance that non-conformities shall not be enlarged upon, expanded or extended nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district except as may be authorized in this these regulations.

Section 4.18 Nonconforming Lots of Record. In any district, notwithstanding limitations imposed by other provision of this ordinance, a primary structure and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both that are generally applicable in the district provided that the yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located; that such lot has been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would have been lawful; and has remained in separate and individual ownership from adjoining lots or tracts of land continuously during the entire period in which this or previous ordinance would have prohibited creation of such lot. Variance of area, width and yard requirements shall be obtained only through action of the Board of Zoning Adjustment.

Section 4.19 Nonconforming Structures.

- 4.19.01 ***Authority to Continue:*** Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable lot size requirements and/or the applicable bulk regulations, may be continued, so long as it remains otherwise lawful, subject to the restrictions of this section.
- 4.19.02 ***Enlargement, Repair, Alterations:*** Any such structure described in Section 4.19.01 may be enlarged, maintained, repaired or remodeled, provided, however, that no such enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure. All enlargements shall meet all existing required setbacks unless provided elsewhere in this ordinance.
- 4.19.03 ***Damage or Destruction:*** In the event that any structure described in Section 4.19.01 is damaged or destroyed, by any means, to the extent of more than 50 percent of its structural value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located; provided that structures located on a lot that does not comply with the applicable lot size requirements in Section 4.18, shall not have a side yard of less than five feet. When a structure is damaged to the extent of less than 50 percent of its structural value, no repairs or restoration shall be made unless a zoning permit is obtained and restoration is actually begun within one year after the date of such partial destruction and is diligently pursued to completion.
- 4.19.04 ***Moving:*** No structure shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot unless a zoning permit is granted and the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

Section 4.20 Nonconforming Uses.

4.20.01 ***Nonconforming Uses of Land:*** Where at the effective date of adoption or amendment of this ordinance, lawful use of land exists that is made no longer permissible under the terms of this ordinance as enacted or amended, such use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance;
2. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this ordinance.
3. If any such nonconforming use of land ceases for any reason for a period of more than 12 consecutive months, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located.

4.20.02 ***Nonconforming Uses of Structures:*** If a lawful use of a structure, or of structure and premises in combination, exists at the effective date of adoption or amendment of this ordinance, that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful subject to the following provisions:

1. No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to use permitted in the district in which it is located;
2. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance but no such use shall be extended to occupy any land outside such building;
3. If no structural alterations are made, any nonconforming use of a structure or structures and premises may be changed to another nonconforming use provided that the Planning Commission and City Council, after each has completed a Public Hearing as per State Statute, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Planning Commission and/or City Council may require appropriate conditions and safeguard in accord with the provisions of this ordinance;
4. Any structure, or structure and land in combination, in any or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located and the nonconforming use may not thereafter be resumed;
5. When a nonconforming use of a structure or structure and premises in combination is discontinued or abandoned for 12 consecutive months, the structure or structure and premises in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located;
6. Where nonconforming use status is applied to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

Section 4.21 Repairs and Maintenance.

4.21.01 On any building devoted in whole or in part to any nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs or on repair or

replacement of non-bearing walls, fixtures, wiring or plumbing provided that the cubic content of the building as it existed at the time of passage of amendment of this ordinance shall not be increased.

- 4.21.02 Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

Section 4.22 Uses under Conditional Use Permit to be Nonconforming Uses Upon Transfer. Any use for which a conditional use permit is issued as provided in this ordinance shall be deemed a nonconforming use upon transfer of property unless current owner has applied and is granted such conditional use permit.

Section 4.23 Drive-in Facilities. Any use permitted in an zoning district which intends to conduct a portion or all of its business with persons desiring to remain in their automobiles, or which allows products to be consumed on the premises outside the principal building, and which is not subject to the conditional use reviewed in the provisions in Article 6 or is not a part of a Clustered/Mixed Use District, must submit a site plan to be reviewed and approved by the City. In reviewing and approving the site plan for such a use, the City must be satisfied that the traffic circulation on and adjacent to the site conforms to the following criteria:

- 4.23.01 Traffic circulation shall be arranged so that internal pedestrian and vehicular movements are compatible and traffic hazards are minimal.
- 4.23.02 Traffic circulation, ingress and egress shall be arranged so as to avoid hazardous or adverse effects on adjacent sites and streets.

Section 4.24 Recreational Vehicles, Trailers, or Equipment. All vehicles, trailers, or equipment expressly designated or used for recreational or seasonal use shall not be used for dwelling purposes on any lot except as may be authorized elsewhere within this Ordinance. Such vehicles, trailers, or equipment shall not be parked or maintained in the required front yard.

Section 4.25 Prohibited Uses. All uses not specifically listed within a particular zoning district are deemed to be prohibited until some point where this ordinance is amended to include a given use.

Section 4.26 Fees. The payment of any and all fees for any zoning or subdivision related action or permit request shall be required prior to the issuance or investigation of any said action or permit request. Such fees shall be part of the Master Fee Schedule adopted and published by the City Council by separate ordinance.

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

PASSED AND APPROVED THIS 8th day of June, 2011.

Mayor Alan Zavodny

Interim City Clerk Tami Comte

Mayor Alan Zavodny declared the public hearing open at 7:30 p.m. to conduct a hearing to determine if the required facts and conditions exist for the designation of the main thoroughfare, for the creation of Street Improvement District No. 2011-3 and for the construction of the proposed improvements in said district.

Matt Reif stated that this is for West "O" Street from the Highway to the railroad tracks.

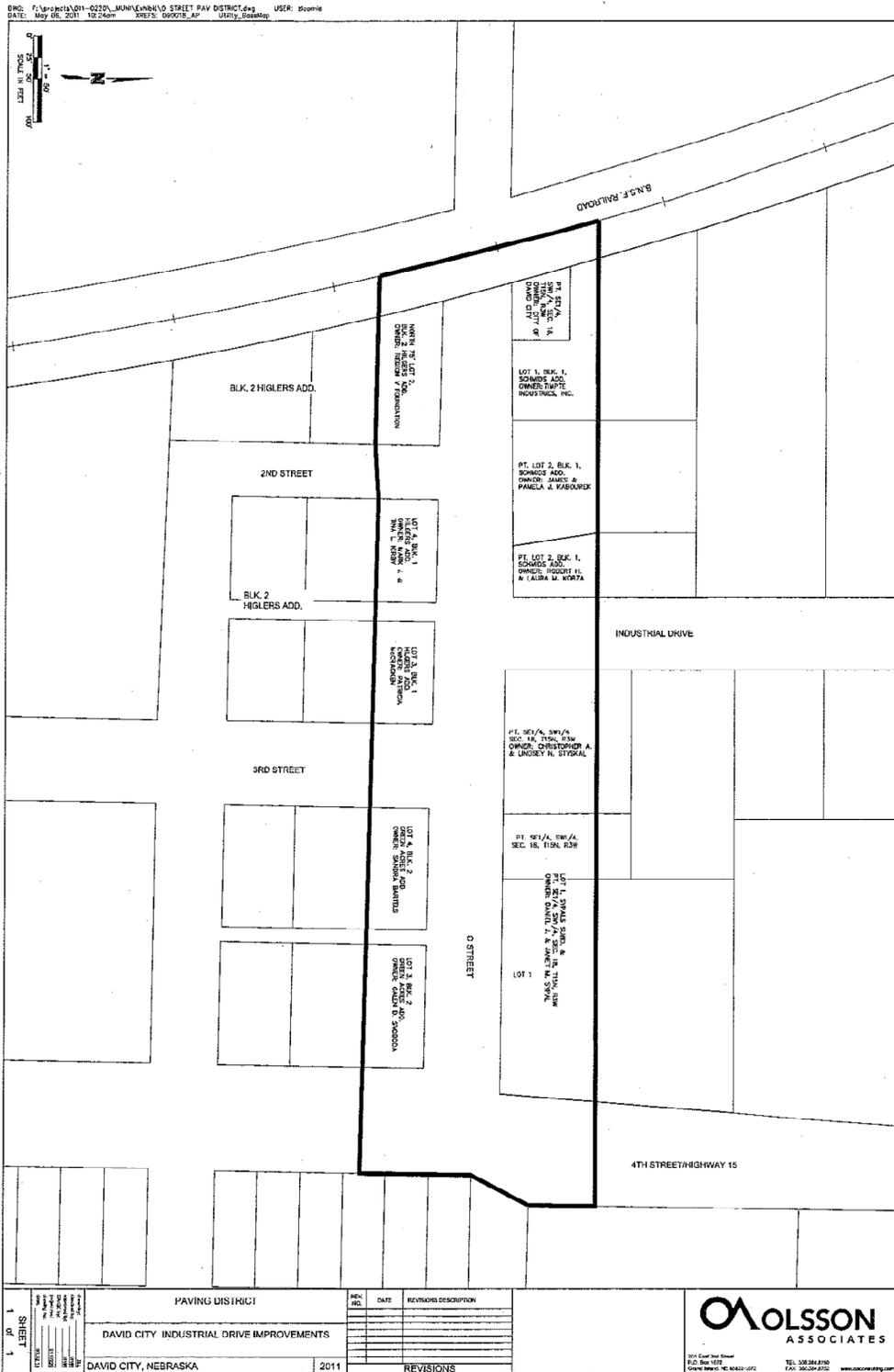
Mayor Zavodny asked Matt Rief if we had determined that the railroad tracks were where we needed to go to.

Matt Rief stated that it is where we need to go. He stated that with this district you can do some ditch clean out on the other side of the tracks. Pipe wise there should be capacity. There are actually three pipes under the tracks. There is a very large about a 36" squash pipe and another 30" and another 24". So there is pretty good capacity for pipes underneath it is just a matter of cleaning out the ditch.

Mayor Zavodny stated that he talked to the County briefly about development past the railroad tracks and they certainly expressed a willingness to consider what they would need to do to help with that too. Obviously, they haven't done anything official but he thinks there is a willingness there.

Matt Rief stated that he should have a preliminary design by the end of the month.

Mayor Zavodny declared the public hearing closed at 7:33 p.m.



Ordinance No. 1146 was introduced and passed on first reading only on May 11, 2011.

After some discussion, Council member Scribner made a motion to pass Ordinance No. 1146 on the second reading only. Council member Smith seconded the motion. Voting AYE: Council members Smith, Svoboda, Scribner and Vandenberg. Voting NAY: Council members Rogers, and Kroesing. The motion carried and Ordinance No. 1146 was passed on second reading only as follows:

ORDINANCE NO. 1146

AN ORDINANCE TO AMEND ORDINANCE NO. 1040 CODIFYING THE GENERAL ORDINANCES OF THE MUNICIPALITY BY AMENDING CHAPTER 10: BUSINESS REGULATIONS; ARTICLE 1: ALCOHOLIC BEVERAGES §10-117 ALCOHOLIC BEVERAGES; HOURS OF SALE; 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 CHAPTER 10, ARTICLE 1, §10-117 OF THE MUNICIPAL CODE BOOK BE AMENDED AS FOLLOWS:

§10-117 ALCOHOLIC BEVERAGES; HOURS OF SALE.

Section 1. For purposes of this section, "on sale" shall be defined as alcoholic beverages sold at retail by the drink for consumption on the premises of the licensed establishment. "Off sale" shall be defined as alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

It shall be unlawful for any licensed person or persons or their agents to sell any alcoholic beverages within the Municipality except during the hours provided herein:

HOURS OF SALE

Alcoholic Liquors (except beer and wine)

Secular Days

Off Sale 6:00 A.M. to 1:00 A.M.
On Sale 6:00 A.M. to 2:00 A.M.

Sundays

Off Sale 12:00 Noon to 1:00 A.M.
On Sale 12:00 Noon to 2:00 A.M.

Beer and Wine

Secular Days

Off Sale 6:00 A.M. to 1:00 A.M.
On Sale 6:00 A.M. to 2:00 A.M.

Sundays

Off Sale 12:00 P.M. (Noon) to 1:00 A.M.
On Sale 12:00 P.M. (Noon) to 2:00 A.M.

Provided that such limitations shall not apply after twelve (12:00) o'clock Noon on Sunday to a licensee which is a non-profit corporation holding a license pursuant to section 53-179(2) Reissue Revised Statutes of Nebraska.

No person or persons shall consume any alcoholic beverages on licensed premises for a period of time longer than fifteen (15) minutes after the time fixed herein for stopping the sale of alcoholic beverages on the said premises. Nothing in this section shall be construed to prohibit licensed premises from being open for business on days and hours during which the sale or dispensing of alcoholic beverages is prohibited by this section. (Ref. 53-179 RS Neb.)

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

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

PASSED AND APPROVED this 11th day of May, 2011.

Passed on 2nd reading only
Mayor Alan Zavodny

Passed on 2nd reading only
Interim City Clerk Tami L. Comte

Council member Scribner made a motion to advance to agenda item #18 Consideration of Resolution No. 17-2011 for the sale of the property located at 315 So. 4th Street. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Smith, Rogers, Kroesing, Vandenberg and Svoboda. Voting NAY: None. The motion carried.

Council member Kroesing introduced Resolution No. 17-2011 and moved for its passage and adoption. Council member Smith seconded the motion. Voting YEA: Council members Kroesing, Rogers, Svoboda, Vandenberg and Smith. Voting NAY: None. Council member Scribner was absent. The motion carried and Resolution No. 17-2011 was passed and adopted as follows:

RESOLUTION NO. 17 - 2011

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

WHEREAS, the City of David City, Nebraska, is the owner of the building and property located at 315 South 4th Street, David City, Nebraska and legally described as David City PT NE ¼ NW ¼ Cedar Lawn Addition (30-15-3); Lot Width x Depth: 160 x 224, and,

WHEREAS, the City of David City, Nebraska, desires to sell said building and property, as is, to the bidder that is deemed by the City Council of the City of David City, Nebraska as the most favorable. The City of David City, Nebraska reserves the right to reject any and all bids.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the City of David City, Nebraska be allowed to conduct a sale of real and personal property and that notice shall be given that said building and

property is for sale, as is, and that sealed bids be accepted until 3:00 o'clock p.m. on July 11, 2011 for the sale of the building and property. All sealed bids shall be publicly opened and read aloud during the Regular City Council Meeting of July which convenes at 7:00 o'clock p.m. on July 13, 2011 at the City Office, located at 557 North 4th Street. Terms of the sale will include a 10% down-payment with the balance payable within 90 days. The buyer shall pay all closing costs associated with said property.

BE IT FURTHER RESOLVED that the City of David City, Nebraska shall set a minimum price of thirty thousand nine hundred dollars (\$30,900.00) and this price shall serve as a minimum price for all sealed bids.

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

Dated this 8th day of June, 2011.

Mayor Alan Zavodny

(ATTEST)

Interim City Clerk Tami Comte

Mayor Alan Zavodny declared the public hearing open at 7:45 p.m. concerning an application to the Nebraska Dept. of Economic Development for a Community Development Block Grant for \$300,000.00 for Bone Creek Museum of Agrarian Art and the renovation of the main level of the building located at 312 No. 5th Street.

Economic Development Director Keith Marvin stated that this is the same preservation part of the tourism grant that The Thorpe went after last year but didn't get. Under the tourism grant you can do things that are physical structures and facilities if they are going to increase your tourism activity. Bone Creek is going to go after the \$300,000 this time and see if they have better luck than The Thorpe did.

Mayor Zavodny asked what was required of the City.

Keith Marvin stated that the requirement of the City is to act as the pass through agent for going for the grant. The goal is to have very little activity. There is going to be some things out of the Clerks' office as far as keeping files but the goal is to sit down with Northeast and have them do the grant administration and get everything up front as far as what's going to be expected.

Mayor Zavodny stated that the event that the museum had recently when they had the Lt. Governor come to town and the Dale Nichols did bring visitors from all over the country, and certainly, the state and it was a good event for our community and it was well attended to hear his remarks. He stated that you live here and you drive past some things every day and you

really don't think of us as a tourist destination but the museum certainly did bring people to town and it was a nice event.

Mark Moseman, with the Butler County Museum, stated that it was a real milestone for them. They have been here for three years and this was a very big event and it's now really showing our community and our state and the nation that we are a national destination for tourists and art work of this particular genre. We are real pleased to be able to contribute to the David City community in drawing visitors here.

Keith Marvin stated that the \$300,000 is only a small piece of the investment that they are looking at making. They are working with USDA to hopefully obtain a \$100,000 grant and about \$180,000 in loans and I can tell you that they have a commitment between building and cash of \$170,000 from personal donations. This is going to be roughly a \$735,000 effort in our downtown area.

Mayor Zavodny declared the public hearing closed at 7:49 p.m.

Mayor Zavodny stated that a while back he and Mr. Egr had a meeting with Mr. Buntgen and Mr. Sipple (Mr. Buntgen's attorney) and they tried to see how close we were, where we had common ground and what we could agree on. We are at a point where it is a business decision and there is no admission by Bill of any wrong doing and no admission by the City of any wrong doing. Some of the issues that were out there were the open meeting law and how the first termination was going to be viewed by the court and the expense of the lawyers and the time that it takes to do all of this. If we are able to approve this tonight, the insurance company will participate at the level of \$2,500. They will not participate in lost wages so, certainly, this is probably the most inexpensive way for us to get out of this situation. The amount of the settlement, if approved, will be \$10,459.08 and with the \$2,500 from the insurance company that would reduce our amount significantly and that puts an end to it. We're not going to spend any more time with people going to court. That explains the logic that got us to this point and it also provides a great opportunity for a whole lot of people that have anguished over this situation for a long time to say it's done and we move on.

Council member Svoboda made a motion to approve the settlement matter regarding Bill Buntgen in the amount of \$10,459.08 of which \$2,500.00 will be paid by the City's insurance carrier. Council member Scribner seconded the motion. Voting AYE: Council members Scribner, Smith, Rogers, Kroesing, Vandenberg and Svoboda. Voting NAY: None. The motion carried.

Council member Kroesing introduced Ordinance No. 1148.

Council member Kroesing stated that he had one person in his ward that voiced objection to this ordinance.

Council member Scribner made a motion to pass Ordinance No. 1148 on 1st reading only. Council member Rogers seconded the motion. Voting AYE: Council members Smith, Vandenberg, Scribner, Rogers, Svoboda and Kroesing. Voting NAY: None. The motion carried and Ordinance No. 1148 was passed on first reading only as follows:

ORDINANCE NO. 1148

AN ORDINANCE AUTHORIZING THE OPERATION OF ALL-TERRAIN VEHICLES WITHIN THE CORPORATE LIMITS OF THE CITY OF DAVID CITY, NEBRASKA; TO ESTABLISH CONDITIONS OF OPERATION OF THE SAME; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; AND TO PROVIDE FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

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

SECTION 1: Pursuant to Section 60-6,356(7) of the Revised Statutes of Nebraska, Reissue of 2010, a City may adopt an Ordinance authorizing the operation of all-terrain vehicles.

SECTION 2: It is hereby found and determined by the Mayor and City Council of the City of David City, Nebraska that all-terrain vehicles should be authorized to be operated within the corporate limits of the City in accordance with Section 60-6,356(3) of the Revised Statutes of Nebraska, Reissue of 2010.

SECTION 3: It is hereby found and determined by the Mayor and City Council of the City of David City, Nebraska that the following restrictions for the operation of all-terrain vehicles within the corporate limits of the City be as follows:

- (A) Operators of all-terrain vehicles must have a valid Class "O" operator's license or a farm permit as provided in Section 60-4,126 of the Revised Statutes of Nebraska, Reissue 2010.
- (B) All-terrain vehicles may be operated only between the hours of sunrise and sunset.
- (C) Operators shall have liability insurance coverage for the all-terrain vehicles effective while operating the same within the corporate limits of the City.
- (D) Operators shall not operate an all-terrain vehicle at a speed in excess of thirty (30) miles per hour on highways and not to exceed the speed limit posted or provided in Nebraska Statutes, whichever is less, within the corporate limits of the City.
- (E) A person operating an all-terrain vehicle shall provide proof of insurance coverage for the same to any peace officer requesting such proof within five (5) days of such request.
- (F) When a person is operating an all-terrain vehicle the headlight and taillight of said vehicle should be on.

- (G) When a person is operating an all-terrain vehicle, it shall have the same equipped with a bicycle safety flag which extends not less than five feet (5') above ground attached to the rear of the vehicle. Said safety flag shall be triangular in shape with and area of not less than thirty (30) square inches and shall be day-glow in color.

- (H) An all-terrain vehicle may be operated without complying with the aforesaid paragraphs for the crossing of a highway only if:
 - (1) The crossing is made at an angle of approximately ninety degrees (90°) to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing.
 - (2) The vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway.
 - (3) The driver yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard.
 - (4) In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance, since it is the express intent of the Mayor and City Council to enact each section, subsection, clause or phrase separately.

SECTION 5: All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SECTION 6: This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

PASS AND APPROVED this _____ day of _____, 2011.

ATTEST:

Passed on 1st reading only
Mayor

Passed on 1st reading only
Interim City Clerk

Council member Kroesing introduced Ordinance No. 1149.

There was a question about what type is a utility type vehicle. It was noted that they are the Alligators or mules, a side-by-side vehicle.

Council member Scribner asked why there was a \$10.00 fee on golf carts and not on ATV's or UTV's.

Police Chief McPhillips stated that according to State Statute if you legalize ATV's and UTV's that they have to be titled at the courthouse. It is not a requirement for golf carts. He noted that they are titled, they are not registered. They do not need license plates.

Dana Trowbridge brought up the issue of sales tax. If the vehicle is titled in Butler County, does the business that sold the vehicle collect the tax or does the County collect the tax. It was determined that City Attorney Egr would be asked to research these issues.

Council member Kroesing made a motion to pass Ordinance No. 1149 on 1st reading only. Council member Rogers seconded the motion. Voting AYE: Council members Smith, Vandenberg, Scribner, Rogers, Svoboda and Kroesing . Voting NAY: None. The motion carried and Ordinance No. 1149 was passed on first reading only as follows:

ORDINANCE NO. 1149

AN ORDINANCE AUTHORIZING THE OPERATION OF UTILITY TYPE VEHICLES WITHIN THE CORPORATE LIMITS OF THE CITY OF DAVID CITY, NEBRASKA; TO ESTABLISH CONDITIONS OF OPERATION OF THE SAME; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; AND TO PROVIDE FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

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

SECTION 1: Pursuant to Section 60-6,356(7) of the Revised Statutes of Nebraska, Reissue of 2010, a City may adopt an Ordinance authorizing the operation of utility-type vehicles.

SECTION 2: It is hereby found and determined by the Mayor and City Council of the City of David City, Nebraska that utility-type vehicles should be authorized to be operated within the corporate limits of the City in accordance with Section 60-6,356(3) of the Revised Statutes of Nebraska, Reissue of 2010.

SECTION 3: It is hereby found and determined by the Mayor and City Council of the City of David City, Nebraska that the following restrictions for the operation of all-terrain vehicles within the corporate limits of the City be as follows:

- (A) Operators of utility-type vehicles must have a valid Class "O" operator's license or a farm permit as provided in Section 60-4,126 of the Revised Statutes of Nebraska, Reissue 2010.
- (B) Utility-type vehicles may be operated only between the hours of sunrise and sunset.

- (C) Operators shall have liability insurance coverage for the utility-type vehicles effective while operating the same within the corporate limits of the City.
- (D) Operators shall not operate a utility-type vehicle at a speed in excess of thirty (30) miles per hour on highways and not to exceed the speed limit posted or provided in Nebraska Statutes, whichever is less, within the corporate limits of the City.
- (E) A person operating a utility-type vehicle shall provide proof of insurance coverage for the same to any peace officer requesting such proof within five (5) days of such request.
- (F) When a person is operating a utility-type vehicle the headlight and taillight of said vehicle should be on.
- (G) When a person is operating a utility-type vehicle, it shall have the same equipped with a bicycle safety flag which extends not less than five feet (5') above ground attached to the rear of the vehicle. Said safety flag shall be triangular in shape with an area of not less than thirty (30) square inches and shall be day-glow in color.
- (H) A utility-type vehicle may be operated without complying with the aforesaid paragraphs for the crossing of a highway only if:
 - (1) The crossing is made at an angle of approximately ninety degrees (90°) to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing.
 - (2) The vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway.
 - (3) The driver yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard.
 - (4) In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance, since it is the express intent of the Mayor and City Council to enact each section, subsection, clause or phrase separately.

SECTION 5: All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SECTION 6: This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

PASS AND APPROVED this _____ day of _____, 2011.

ATTEST:

Passed on 1st reading only

Mayor

Passed on 1st reading only
Interim City Clerk

Council member Scribner introduced Ordinance No. 1150.

Council member Scribner made a motion to change the language in Ordinance No. 1150 to read: (I) No person shall operate a golf cart under the age of 16 years. (This was a change from the original wording of (I) No person shall operate a golf cart under the age of 19 years.) Council member Svoboda seconded the motion. Voting AYE: Council members Svoboda, Scribner, Smith, Vandenberg, Rogers and Kroesing. Voting NAY: None. The motion carried.

Chief McPhillips stated that the whole reason that this is before the council is that there has been a long standing practice to allow golf carts to be used in David City. It was being done against State Statute making a whole class of criminals doing it. The police department doesn't look away and turn its head for that kind of stuff so we want to make them legal. McPhillips said, "I would ask that the council pass it tonight so that we don't have this issue for two more months. Let's make these things legal for these people who have already been using them so we don't have to enforce anything."

Mayor Zavodny asked Chief McPhillips if he was recommending that they suspend the rules and pass it on third and final.

Chief McPhillips said, "Yes."

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 AYE: Council members Smith, Kroesing, Rogers, Svoboda and Vandenberg. Voting NAY: Council member Scribner. The motion carried.

Council member Kroesing made a motion to pass Ordinance No. 1150 on third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Smith, Rogers, Svoboda and Vandenberg. Voting NAY: Council member Scribner. The motion carried and Ordinance No. 1150 was passed on third and final reading as follows:

ORDINANCE NO. 1150

AN ORDINANCE AUTHORIZING THE OPERATION OF GOLF CARTS WITHIN THE CORPORATE LIMITS OF THE CITY OF DAVID CITY, NEBRASKA; TO ESTABLISH CONDITIONS OF OPERATION OF THE SAME; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; AND TO PROVIDE FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

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

SECTION 1: Pursuant to Section 17-505 of the Revised Statutes of Nebraska, Reissue of 2007, a City may adopt an Ordinance with rules and regulations not inconsistent with

Nebraska State Statutes as may be expedient for maintaining the peace, good government, and welfare of the corporation.

SECTION 2: It is hereby found and determined by the Mayor and City Council of the City of David City, Nebraska that golf carts should be authorized to be operated within the corporate limits of the City.

SECTION 3: It is hereby found and determined by the Mayor and City Council of the City of David City, Nebraska that the following restrictions for the operation of golf carts within the corporate limits of the City be as follows:

- (A) Any person desiring to operate a golf cart upon the public streets of the City of David City, Nebraska, other than in parades which have been authorized by the Mayor and City Council of David City, Nebraska, and which has not been specifically prohibited to be upon the public streets of the City of David City, Nebraska, shall first apply for a permit upon application forms furnished by the City Clerk and receive from the City Clerk a permit for said operation of a golf cart.
- (B) A non-refundable application fee of \$10.00 shall accompany each application. Further, Applicant shall pay all other expenses and costs associated with Applicant's application.
- (C) The permit is valid only one (1) year from the date of its issuance.
- (D) Operators of golf carts must not be operating golf carts because they are under suspension, revocation, and/or restrictions of their operators license under the laws of the State of Nebraska.
- (E) Golf carts may be operated only between the hours of sunrise and sunset.
- (F) Operators shall have liability insurance coverage for golf carts effective while operating the same within the corporate limits of the City.
- (G) Operators shall not operate a golf cart on the highway. Operators shall not operate a golf cart at a speed in excess of thirty (30) miles per hour and not to exceed the speed limit posted or provided in Nebraska Statutes, whichever is less, within the corporate limits of the City.
- (H) A person operating a golf cart shall provide proof of insurance coverage for the same to any peace officer requesting such proof within five (5) days of such request.
- (I) No person shall operate a golf cart under the age of 16 years.
- (J) When a person is operating a golf cart, they shall have the same equipped with a slow moving emblem on the rear of the golf cart fully visible at all times.
- (K) A golf cart may be operated without complying with the aforesaid paragraphs for the crossing of a highway only if:

- (1) The crossing is made at an angle of approximately ninety degrees (90°) to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing.
- (2) The vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway.
- (3) The driver yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard.
- (4) In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance, since it is the express intent of the Mayor and City Council to enact each section, subsection, clause or phrase separately.

SECTION 5: All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SECTION 6: This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

PASS AND APPROVED this 8th day of June, 2011.

ATTEST:

Mayor

Interim City Clerk

Council member Scribner made a motion to approve a Governmental 401(a) Plan for the David City employees with Nationwide Retirement Solutions. Council member Kroesing seconded the motion. Voting AYE: Council members Scribner, Smith, Rogers, Kroesing, Vandenberg and Svoboda. Voting NAY: None. The motion carried.

**ADOPTION AGREEMENT FOR
NATIONWIDE GOVERNMENTAL
401(A) PLAN**

CAUTION: Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

EMPLOYER INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in this Employer Information Section.)

1. EMPLOYER'S NAME, ADDRESS, TELEPHONE NUMBER AND TIN

Name: City of David City

Address: 557 North 4th Street

David City Nebraska 68632
City State Zip

Telephone: 402-367-3135

Taxpayer Identification Number (TIN): 47-6006162

2. TYPE OF GOVERNMENTAL ENTITY

CAUTION: The Plan may only be adopted by State and local governments and agencies and may not be adopted by 501(c) tax-exempt organizations, federal governmental agencies, Native American tribes or private sector employers.

- a. State government or state agency
- b. County or county agency
- c. Municipality or municipal agency
- d. Other, please specify: _____ (e.g., an eligible water district)

3. EMPLOYER'S FISCAL YEAR means the 12 consecutive month period:

a. Beginning on October 1 (e.g., January 1st)
month day

and ending on September 30
month day

b. Other: _____

PLAN INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in Questions 9. through 11.)

4. PLAN NAME:

City of David City Nebraska 401(a) Defined Contribution Pension Plan

5. EFFECTIVE DATE

- a. This is a new Plan effective as of June 8th, 2011 (hereinafter called the "Effective Date").
- b. This is an amendment and restatement of a plan which was originally effective _____. The effective date of this amendment and restatement is _____ (hereinafter called the "Effective Date").
- c. FOR EGTRRA RESTATEMENTS: This is an amendment and restatement to bring a plan into compliance with the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") and other legislative and regulatory changes. The Plan's original effective date was _____. Except as specifically provided in the Plan, the effective date of this amendment and restatement is _____ (hereinafter called the "Effective Date"). (May enter a restatement date that is the first day of the current Plan Year. The Plan contains appropriate retroactive effective dates with respect to provisions for the appropriate laws.)

401(a) Plan

6. PLAN YEAR means the 12 consecutive month period:

Beginning on January 1 month day (e.g., January 1st)

and ending on December 31 month day

EXCEPT that there will be a Short Plan Year (if the effective date of participation is based on a Plan Year, then coordinate with Question 16.):

a. N/A

b. beginning on June 8, 2011 month day, year (e.g., July 1, 2007)

and ending on December 31, 2011 month day, year

7. VALUATION DATE means:

a. Every day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, and any stock exchange used by such agent are open for business (daily valuation).

b. The last day of each Plan Year.

c. The last day of each Plan Year half (semi-annual).

d. The last day of each Plan Year quarter.

e. Other (specify day or days): _____ (must be at least once each Plan Year).

8. PLAN NUMBER assigned by the Employer

a. 001

b. 002

c. Other: _____

9. TRUSTEE(S) OR INSURER(S):

a. This Plan is funded exclusively with Contracts and the name of the Insurer(s) is:

(1) _____ (2) _____ (if more than 2, add names to signature page).

b. Individual Trustee(s) who serve as Trustee(s) over assets not subject to control by a corporate Trustee. (Add additional Trustees as necessary.)

Name(s)

Title(s)

Joan Kovar

Interim - City Administrator

Address and Telephone number:

1. Use Employer address and telephone number.

2. Use address and telephone number below:

Address:

Street

City

State

Zip

Telephone:

c. Corporate Trustee

Name:

Address:

Street

City

State

Zip

Telephone:

401(a) Plan

AND, the Trustee shall serve as:

d. a Directed (nondiscretionary) Trustee over all Plan assets except for the following:

e. a Discretionary Trustee over all Plan assets except for the following:

10. PLAN ADMINISTRATOR'S NAME, ADDRESS AND TELEPHONE NUMBER:

(If none is named, the Employer will be the Plan Administrator.)

a. Employer (Use Employer address and telephone number).

b. Use name, address and telephone number below:

Name: Nationwide Retirement Solutions, Inc.

Address: 5900 Parkwood Place

Street

Dublin Ohio 43016

City

State

Zip

Telephone: 877-677-6378

11. CONSTRUCTION OF PLAN

This Plan shall be governed by the laws of the state or commonwealth where the Employer's (or, in the case of a corporate Trustee (or Insurer), such Trustee's (or Insurer's)) principal place of business is located unless another state or commonwealth is specified:

12. CONTRIBUTION TYPES

The following contributions are authorized under this Plan. The selections made below should correspond with the selections made under the Contributions and Allocations section of this Adoption Agreement.

a. Employer Contributions.

1. The Contribution will be made each Plan Year and the Plan will be a Money Purchase Plan.

2. The Contribution will be discretionary each Plan Year and the Plan will be a Profit Sharing Plan.

b. Matching Contributions.

c. Rollover Contributions.

d. Employee Contributions (The Plan will treat as pick-up contributions under Code §414(h)(2)).

e. Employee After-Tax Contributions.

f. This Plan qualifies as a Social Security Replacement Plan.

g. This is a frozen Plan effective: _____.

ELIGIBILITY REQUIREMENTS

13. ELIGIBLE EMPLOYEES (Plan Section 1.21) means all Employees (including Leased Employees) EXCEPT for the following Employees: (select all that apply below)

a. N/A. No exclusions.

b. The following are excluded:

1. Union Employees (as defined in Plan Section 1.21)

2. Non-Resident Aliens without any United States source income, as described in Code §410(b)(3)(C).

3. Leased Employees.

4. Part-time/Temporary/Seasonal Employees. A part-time, temporary or seasonal Employee is an Employee whose regularly scheduled Service is less than 120 Hours of Service in the relevant eligibility computation period.

5. Other: _____ (must be definitely determinable)

14. CONDITIONS OF ELIGIBILITY (Plan Section 3.1)

Any Eligible Employee will be eligible to participate in the Plan upon satisfaction of the following (select either a, OR b, and c.):

a. No age or service required.

b. Completion of the following service requirement which is based on Years of Service:

1. No service requirement

2. 6 months of service

3. 1 Year of Service

4. 2 Years of Service

5. _____ Hours of Service within _____ consecutive months from the Eligible Employee's employment commencement date.

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6. _____ consecutive months of employment from the Eligible Employee's employment commencement date.
7. Other: _____
- c. Attainment of age:
1. No age requirement
 2. 20 1/2
 3. 21
 4. Other: _____ (may not exceed 21)

15. EFFECTIVE DATE OF PARTICIPATION (ENTRY DATE) (Plan Section 3.2)
 An Eligible Employee who has satisfied the eligibility requirements will become a Participant in the Plan as of:
- a. the date such requirements are met.
 - b. the first day of the month coinciding with or next following the date on which such requirements are met.
 - c. the first day of the Plan Year quarter coinciding with or next following the date on which such requirements are met.
 - d. the earlier of the first day of the Plan Year or the first day of the seventh month of the Plan Year coinciding with or next following the date on which such requirements are met.
 - e. the first day of the Plan Year coinciding with or next following the date on which such requirements are met.
 - f. the first day of the Plan Year in which such requirements are met.
 - g. the first day of the Plan Year in which such requirements are met, if such requirements are met in the first 6 months of the Plan Year, or as of the first day of the next succeeding Plan Year if such requirements are met in the last 6 months of the Plan Year.
 - h. other: _____

SERVICE

16. RECOGNITION OF SERVICE WITH OTHER EMPLOYERS (Plan Section 1.57)
 a. No service with other Employers shall be recognized.

OR, service with the designated employers and purposes is recognized as follows (attach an addendum to the Adoption Agreement if more than 3 employers):

	Eligibility	Vesting	Contribution Allocation
b. <input type="checkbox"/> Employer name: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Employer name: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Employer name: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Limitations: _____ (e.g., credit service with X only on/following 1/1/07 or credit all service with entities the Employer acquires after 12/31/06).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

NOTE: If the other Employer(s) maintained this qualified Plan, then Years of Service with such Employer(s) must be recognized pursuant to Plan Section 1.57 regardless of any selections above.

VESTING

17. VESTING OF PARTICIPANT'S INTEREST (Plan Section 6.4(b))
- a. N/A. No Employer contributions are subject to a vesting schedule (skip to Question 19).
 - b. 100% for those Participants employed on _____ (enter date). For those Participants hired after such date, the vesting provisions selected below apply.
 - c. The vesting provisions selected below apply.

Vesting for Employer Contributions.

- d. 100% vesting. Participants are 100% vested in Employer contributions upon entering Plan
- e. The following vesting schedule, based on a Participant's Years of Service, applies to Employer contributions:
 1. 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
 2. 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
 3. 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
 4. 3 Year Cliff: 0-2 years-0%; 3 years-100%
 5. 7 Year Graded: 0-2 years-0%; 3 years-20%; 4 years-40%; 5 years-60%; 6 years-80%; 7 years-100%
 6. 5 Year Cliff: 0-4 years-0%; 5 years-100%

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7. Other:

Service	Percentage
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%

18. **ADDITIONAL VESTING LIMITATIONS**

Regardless of the vesting schedule, Participants shall become fully Vested upon (select a. or all that apply of b. and c.):

- a. N/A. Apply contributions to the Plan are fully Vested.
- b. Death.
- c. Total and Permanent Disability.

AND, unless otherwise elected below, a Year of Service for vesting purposes means a Plan Year during which an Employee has completed at least 1,000 Hours of Service

- d. instead of 1,000 Hours of Service, a Year of Service for vesting purposes will be based on _____ Hours of Service
- e. the Elapsed Time Method (Period of Service applies instead of Year of Service) will be used for vesting purposes

RETIREMENT AGES

19. **NORMAL RETIREMENT AGE ("NRA")** (Plan Section 1.37) means the:

- a. date of a Participant's 65th birthday.
- b. later of a Participant's _____ birthday or the _____ anniversary of the first day of the Plan Year in which participation in the Plan commenced.
- c. other: _____.

NORMAL RETIREMENT DATE (Plan Section 1.38) shall commence:

- d. Participant's NRA.
- OR (select one)
- e. first day of the month coinciding with or next following the Participant's NRA.
- f. first day of the month nearest the Participant's NRA.
- g. Anniversary Date coinciding with or next following the Participant's NRA.
- h. Anniversary Date nearest the Participant's NRA.

20. **EARLY RETIREMENT DATE** (select one of a. or b.)

- a. **Not applicable.** The Plan does not provide for an Early Retirement Age.
- b. Early Retirement Date means the:
 - 1. date on which a Participant satisfies the Early Retirement requirements.
 - 2. first day of the month coinciding with or next following the date on which a Participant satisfies the Early Retirement requirements.
 - 3. Anniversary Date coinciding with or next following the date on which a Participant satisfies the Early Retirement requirements.

AND, the Early Retirement requirements are the date (select one or more of the following):

- 4. Participant attains age _____
- AND/OR**, completes... (leave blank if not applicable)
- 5. Participant reaches his/her _____ anniversary of the first day of the Plan Year in which the Participant commenced participation in the Plan.

AND, a Participant who attains his or her Early Retirement Date shall?

- 6. be 100% vested upon attainment of his or her Early Retirement Date.
- 7. be subject to the vesting schedule at 17.

COMPENSATION

21. **COMPENSATION** (Plan Section 1.11) with respect to any Participant means:

- a. Wages, tips and other compensation on Form W-2.
- b. Section 3401(a) wages (wages for withholding purposes).
- c. 415 safe harbor compensation.

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COMPENSATION shall be based on the following determination period:

- d. the Plan Year.
- e. the Fiscal Year coinciding with or ending within the Plan Year.
- f. the calendar year coinciding with or ending within the Plan Year.

NOTE: The Limitation Year for Code Section 415 purposes shall be the same as the determination period for Compensation unless an alternative period is specified: _____ (must be a consecutive twelve month period).

ADJUSTMENTS TO COMPENSATION

g. N/A. No adjustments.

h. Compensation shall be adjusted by: (select all that apply)

- 1. including compensation which is not currently includible in the Participant's gross income by reason of the application of Code Sections 125 (cafeteria plan), 132(f)(4) (qualified transportation fringe), 402(e)(3) (401(k) plan), 402(h)(1)(B) (simplified employee pension plan), 414(h) (employer pickup contributions under a governmental plan), 403(b) (tax sheltered annuity) or 457(b) (eligible deferred compensation plan)
- 2. excluding reimbursements or other expense allowances, fringe benefits (cash or non-cash), moving expenses, deferred compensation (other than deferrals specified in 1. above) and welfare benefits
- 3. excluding Compensation paid during the determination period while not a Participant in the Plan
- 4. excluding overtime
- 5. excluding bonuses
- 6. excluding commissions
- 7. other: _____

(e.g., describe Compensation from the elections available above or a combination thereof as to a Participant group (e.g., no exclusions as to Division A Employees and exclude bonuses as to Division B Employees); and/or describe another exclusion (e.g., exclude shift differential pay)).

CONTRIBUTIONS AND ALLOCATIONS

22. FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION AND ALLOCATION (Plan Section 4.1) (Select all that apply)

- a. ___% (not to exceed 25%) of each Participant's Compensation.
- b. \$ ___ per Participant.
- c. \$ ___ per Hour of Service worked while an Eligible Employee.
- d. Discretionary contribution, to be determined by the Employer. ANY discretionary profit sharing contribution for a Plan Year will be allocated in the same ratio as each Participant's Compensation bears to the total of such Compensation of all Participants.
- e. other: Matching contribution per #24 below
(e.g., describe the contribution, including any levels of contributions to groups of employees).

23. REQUIREMENTS TO SHARE IN ALLOCATIONS OF EMPLOYER CONTRIBUTIONS AND FORFEITURES (select a. OR b. and all that apply of c. or d.)

- a. **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status at the end of the Plan Year. (skip to next Question.)
- b. **Conditions for Participants NOT employed at the end of the Plan Year.**
 - 1. A Participant must complete more than ___ Hours of Service.
 - 2. A Participant must complete a Year of Service.
 - 3. Participants will NOT share in the allocations, regardless of service.
 - 4. Participants will share in the allocations, regardless of service.
 - 5. Other: _____
- c. **AND, Waiver of conditions for Participants NOT employed at the end of the Plan Year.** Participants who are not employed at the end of the Plan Year due to the following shall be eligible to share in the allocations regardless of the above conditions (select all that apply):
 - 1. Death.
 - 2. Total and Permanent Disability.
 - 3. Early or Normal Retirement.
- d. **Conditions for Participants employed at the end of the Plan Year.**
 - 1. No service requirement.
 - 2. A Participant must complete a Year of Service.
 - 3. A Participant must complete at least ___ Hours of Service during the Plan Year.

24. EMPLOYER MATCHING CONTRIBUTIONS (Plan Section 11.1(a)(2))

NOTE: Any reference to Elective Deferrals means Elective Deferrals under an eligible governmental 457 plan.

A. Matching Formula.

- a. N/A. There will not be any Employer matching contributions.

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- b. The Employer ... (select 1. or 2.)
1. may make matching contributions equal to a discretionary percentage, to be determined by the Employer, of the Participant's Elective Deferrals.
 2. will make matching contributions equal to 100% (e.g., 50) of the Participant's Elective Deferrals. AND, in determining the Employer matching contribution above, only Elective Deferrals up to the percentage or dollar amount specified below will be matched: (select 3. and/or 4. OR 5.)
 3. 6% of a Participant's Compensation.
 4. \$_____.
 5. a discretionary percentage of a Participant's Compensation or a discretionary dollar amount, the percentage or dollar amount to be determined by the Employer on a uniform basis for all Participants.
- c. The Employer may make matching contributions equal to a discretionary percentage, to be determined by the Employer, of each tier, to be determined by the Employer, of the Participant's Elective Deferrals.
- d. The Employer will make matching contributions equal to a uniform percentage of each tier of each Participant's Elective Deferrals, determined as follows:

NOTE: Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

Tiers of Contributions (indicate \$ or %)	Matching Percentage
First _____	____%
Next _____	____%
Next _____	____%
Next _____	____%

- B. **Matching Limit.** The Employer matching contribution made on behalf of any Participant for any Plan Year will not exceed:
- e. N/A. No limit on the amount of matching contribution.
 - f. \$_____.
 - g. 6% of Compensation.
- C. **Period of Determination.** The matching contribution formula will be applied on the following basis (and any Compensation or dollar limitation used in determining the match will be based on the applicable period):
- h. the Plan Year.
 - i. each payroll period.
 - j. all payroll periods ending within each month.
 - k. all payroll periods ending with or within each Plan Year quarter.
 - l. N/A, the Plan only provides for discretionary matching contributions (i.e., b.1. or c. is selected above).

NOTE: For any discretionary match, the Employer shall determine the calculation methodology at the time the matching contribution formula is determined.

- D. **Allocation Conditions.** Select m. OR n. and all that apply of o. or p.
- m. No conditions. All Participants share in the allocations regardless of service completed during the Plan Year or employment status at the end of the Plan Year. (skip to next Question.)
 - n. **Conditions for Participants NOT employed at the end of the Plan Year.**
 1. A Participant must complete a Year of Service.
 2. Participants will NOT share in the allocations, regardless of service.
 3. Participants will share in the allocations, regardless of service.
 4. Other: _____
 - o. **AND, Waiver of conditions for Participants NOT employed at the end of the Plan Year.** Participants who are not employed at the end of the Plan Year due to the following shall be eligible to share in the allocations regardless of the above conditions (select all that apply):
 1. Death.
 2. Total and Permanent Disability.
 3. Early or Normal Retirement.
 - p. **Conditions for Participants employed at the end of the Plan Year.**
 1. No service requirement.
 2. A Participant must complete a Year of Service.
 3. A Participant must complete at least _____ (not to exceed 1,000) Hours of Service during the Plan Year.

25. FORFEITURES (Plan Sections 1.27 and 4.3(e))

A. **Timing of Forfeiture.**

The Forfeiture will be disposed of in:

- a. N/A. (May only be selected if all contributions are fully Vested; skip to Question 27.)
- b. The Plan Year in which the Forfeiture occurs.
- c. The Plan Year following the Plan Year in which the Forfeiture occurs.

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B. **Plan Expenses.** May Forfeitures first be used to pay any administrative expenses?

- d. Yes.
e. No.

C. **Use of Forfeitures.**

Forfeitures will be:

- f. added to the Employer contribution and allocated in the same manner.
g. used to reduce any Employer contribution.
h. allocated to all Participants eligible to share in the allocations of Employer contributions or Forfeitures in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year.
i. allocated to all Participants eligible to share in the allocations of Employer contributions or Forfeitures, and who have an account balance at the end of the Plan Year (determined after the allocation of Employer contributions), in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year.
j. other: _____

Forfeitures of Employer matching contributions will be:

- k. N/A. Same as above or no Employer matching contributions.
l. used to reduce the Employer matching contribution.
m. added to any Employer matching contribution and allocated as an additional matching contribution.
n. used to reduce any Employer contribution.
o. other: _____

26. **ALLOCATION OF EARNINGS (Plan Section 4.3(c))**

Allocation of earnings with respect to amounts which are not subject to Participant investment direction and which are contributed to the Plan after the previous Valuation Date will be determined:

- a. N/A. All assets in the Plan are subject to Participant investment direction.
b. by using a weighted average based on the amount of time that has passed between the date a contribution or distribution is made and the prior Valuation Date.
c. by treating one-half of all such contributions as being a part of the Participant's nonsegregated account balance as of the previous Valuation Date.
d. by using the method specified in Plan Section 4.3(c) (balance forward method).
e. other: _____

27. **PARTICIPATING EMPLOYEES' MANDATORY EMPLOYEE CONTRIBUTIONS**

- a. No mandatory employee contributions.
b. An Eligible Employee shall, subsequent to his Entry Date, contribute _____% his Compensation to the Plan; or
c. An eligible Employee shall prior to his first Entry Date, make a one-time irrevocable election to contribute a percentage of Compensation to the Plan equal to a percentage from _____% to _____% (not to exceed 25%).

NOTE: The Mandatory Contribution shall be considered "picked up" by the Employer under Code Section 414(h)(2). All Eligible Employees are required to make a Mandatory Contribution as a condition of employment.

28. **EMPLOYEE AFTER-TAX CONTRIBUTIONS**

This Plan provides for:

- a. No Employee After-Tax Contributions.
b. Employee After-Tax Contributions, subject to the following limitations, if any: _____

DISTRIBUTIONS

29. **FORM OF DISTRIBUTIONS (Plan Sections 6.5 and 6.6)**

Distributions under the Plan may be made in (select all that apply)

- a. Lump-sums.
b. Substantially equal installments.
c. Partial withdrawals, provided the minimum withdrawal is \$_____ (leave blank if no minimum).
d. Partial withdrawals or installments are only permitted for required minimum distributions under Code Section 401(a)(9).
e. Annuity (The distribution form will specify the available annuity options).

AND, distributions may be made in:

- f. Cash only.
g. Cash only (except for insurance contracts, annuity contracts or Participant loans).
h. Cash or property, except that the following limitation(s) apply: _____ (leave blank if there are no limitations on property distributions).

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30. CONDITIONS FOR DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT. Distributions upon termination of employment pursuant to Plan Section 6.4(a) will not be made unless the following conditions have been satisfied:
- a. Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following termination of employment.
 - b. Distributions may be made as soon as administratively feasible following termination of employment.
 - c. Other: _____.
31. DISTRIBUTIONS UPON DEATH (Plan Section 6.8(b)(2))
Distributions upon the death of a Participant prior to receiving any benefits shall:
- a. be made pursuant to the election of the Participant or Beneficiary.
 - b. begin within 1 year of death for a designated Beneficiary and be payable over the life (or over a period not exceeding the life expectancy) of such Beneficiary, except that if the Beneficiary is the Participant's spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2.
 - c. be made within 5 (or if lesser _____) years of death for all Beneficiaries.
 - d. be made within 5 (or if lesser _____) years of death for all Beneficiaries, except that if the Beneficiary is the Participant's spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2 and be payable over the life (or over a period not exceeding the life expectancy) of such surviving spouse.
32. IN-SERVICE DISTRIBUTIONS (Plan Section 6.11)
- a. In-service distributions are NOT permitted.
 - b. In-service distributions may be made to a Participant who has reached _____ (insert "normal retirement age" but not earlier than age 62 for a money purchase plan or age 59 1/2 for a profit sharing plan) but has not separated from service.
- AND, in-service distributions are permitted from the following Participant Accounts:
- 1. All Accounts.
 - 2. Only from the following Accounts (select all that apply):
 - a. Account attributable to Employer contributions.
 - b. Rollover Account.
 - c. Transfer Account.
 - d. Other: _____ (specify account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion).
- AND, the following limitations apply to in-service distributions
- 3. N/A. No additional limitations.
 - 4. Additional limitations (select all that apply):
 - a. The minimum amount of a distribution is \$ _____ (may not exceed \$1,000).
 - b. No more than _____ distribution(s) may be made to a Participant during a Plan Year.
 - c. Distributions may only be made from accounts which are fully Vested.
 - d. In-service distributions may be made subject to the following provisions: _____ (must be definitely determinable and not subject to discretion).
33. HARDSHIP DISTRIBUTIONS (Plan Section 11.4)
(May only be selected if this Plan is a Profit Sharing Plan.)
- a. Hardship distributions are NOT permitted.
 - b. Hardship distributions are permitted.
- MISCELLANEOUS**
34. LOANS TO PARTICIPANTS (Plan Section 7.6)
- a. Loans are NOT permitted.
 - b. Loans are permitted.
35. DIRECTED INVESTMENTS (Plan Section 4.10)
- a. Participant directed investments are NOT permitted.
 - b. Participant directed investments are permitted for:
 - 1. All Accounts.
 - 2. The following Participant Accounts (select all that apply):
 - a. Account attributable to Employer contributions.
 - b. Rollover Account.
 - c. Transfer Account.
 - d. Other: _____ (specify account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion).
36. ROLLOVERS (Plan Section 4.6)
- a. Rollovers will NOT be accepted by this Plan.
 - b. Rollovers will be accepted by this Plan, subject to approval by the Administrator.

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AND, if b. is selected, rollovers may be accepted from all Participants who are Employees as well as the following (select all that apply):

1. Eligible Employees who are not Participants.
2. Participants who are Former Employees.

AND, distributions from a Participant's Rollover Account may be made:

3. at any time.
4. only when the Participant is otherwise entitled to a distribution under the Plan.

EGTRRA TRANSITION RULES

The following questions only apply if this is an EGTRRA restatement (i.e., Question 6.c. is selected). If this is not an EGTRRA restatement, then this Plan will not be considered an individually designed plan merely because the following questions are deleted from the Adoption Agreement.

NOTE: The following provisions are designed to be left unanswered if the selections do not apply to the Plan.

37. **MINIMUM DISTRIBUTIONS.**

The Code Section 401(a)(9) Final and Temporary Treasury Regulations apply for purposes of determining required minimum distributions for calendar years beginning with the 2002 calendar year unless otherwise selected below (leave blank if not applicable):

- a. Apply the 2001 Proposed Code Section 401(a)(9) Regulations to all minimum distributions for the 2002 distribution calendar year.
- b. Apply the 1987 Proposed Code Section 401(a)(9) Regulations to all minimum distributions for the 2002 distribution calendar year.
- c. Other: _____ (specify the date the Final and Temporary Regulations were first applied; e.g., the Final and Temporary Regulations only apply to distributions for the 2002 distribution calendar year that are made on or after a specified date *within* 2002 or the Plan's initial Effective Date if later).

Required minimum distributions for calendar year 2001 were made in accordance with Code Section 401(a)(9) and the 1987 Proposed Regulations, unless selected below:

- d. Required minimum distributions for 2001 were made pursuant to the proposed Regulations under Code Section 401(a)(9) published in the Federal Register on January 17, 2001 (the "2001 Proposed Regulations").

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PLEASE CAREFULLY READ

This Adoption Agreement may be used only in conjunction with the Nationwide Retirement Solutions, Inc. Model Governmental Defined Contribution Plan. This Adoption Agreement and the basic Plan document shall together be known as the Nationwide Retirement Solutions Governmental 401(a) Plan.

The adoption of this Plan, the qualification of the Plan and Trust under Code Sections 401(a) and 501(a), respectively, and the related tax consequences are the responsibility of the Employer and its independent tax and legal advisors.

This Adoption Agreement and the accompanying Plan document may not be used unless an authorized representative of Nationwide Retirement Solutions has acknowledged the use of the Plan. Such acknowledgement is for ministerial purposes only. It acknowledges that the Employer is using the Plan but does not represent that this Plan, including the choices selected on the Adoption Agreement, has been reviewed by a representative of Nationwide Retirement Solutions or constitutes a qualified defined contribution plan.

By: _____

With regard to any questions regarding the provisions of this Plan, adoption of the Plan, or the effect of an opinion letter from the IRS, call or write (this information must be completed by the sponsor of this Plan or its designated representative).

Name: Joan Kovar, Interim - City Administrator

Address: 557 North 4th Street

David City, NE 68632

Telephone: 402-367-3135

The Employer and Trustee (or Insurer) hereby cause this Plan to be executed on the date(s) specified below:

EMPLOYER: City of David City

By: _____ DATE SIGNED

TRUSTEE (OR INSURER):

The signature of the Trustee or Insurer appears on a separate agreement or Contract,

OR

Joan Kovar _____ DATE SIGNED
TRUSTEE OR INSURER

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APPENDIX A
SPECIAL EFFECTIVE DATES AND OTHER PERMITTED ELECTIONS

- A. **Special effective dates.** The following special effective dates apply: (Select a. or all that apply at b. - d.)
- a. N/A. No special effective dates selected below.
 - b. **Employer Contributions.** The Employer Contribution provisions under Questions 22. - 24. are effective:

 - c. **Distribution elections.** The distribution elections under Questions ____ (Choose 29. - 32. as applicable) are effective:

 - d. **Other special effective date(s):** _____
For periods prior to the above-specified special effective date(s), the Plan terms in effect prior to its restatement under this Adoption Agreement will control for purposes of the designated provisions. A special effective date may not result in the delay of a Plan provision beyond the permissible effective date under any applicable law.

**APPENDIX B
ADMINISTRATIVE ELECTIONS**

The following are optional administrative provisions. The Administrator may implement procedures that override any elections in this section without a formal Plan amendment. In addition, modifications to this Appendix B will not affect an Employer's reliance on an IRS advisory letter or determination letter.

- A. **Loan Limitations.** Note: the separate loan program required by the DOL will override any inconsistent selections made below. (complete only if loans to Participants are permitted)
- a. N/A. No loan limitations selected below.
 - b. Limitations (select all that apply):
 - 1. Loans will be treated as Participant directed investments.
 - 2. Loans will only be made for hardship or financial necessity (as defined in the loan program).
 - 3. The minimum loan will be \$ _____ (may not exceed \$1,000).
 - 4. A Participant may only have _____ (e.g., one (1)) loan(s) outstanding at any time.
 - 5. All outstanding loan balances will become due and payable in their entirety upon the occurrence of a distributable event (other than satisfaction of the conditions for an in-service distribution (including a hardship distribution), if applicable).
 - 6. Loans are repaid by (if left blank, then payroll deduction applies):
 - a. payroll deduction
 - b. ACH (Automated Clearing House)
 - c. check
 - 7. Loans will only be permitted from the following Participant Accounts (select all that apply or leave blank if no limitations apply):
 - a. Account attributable to Employer contributions.
 - b. Rollover Account.
 - c. Transfer Account.
 - d. Other: _____

AND, if loans are restricted to certain accounts, the limitations of Code Section 72(p) and the adequate security requirement of the DOL Regulations will be applied:

- e. by determining the limits by only considering the restricted accounts.
- f. by determining the limits taking into account a Participant's entire interest in the Plan.

- B. **Life Insurance.** (Plan Section 7.5)
- a. Life insurance may not be purchased.
 - b. Life insurance may be purchased...
 - 1. at the option of the Administrator.
 - 2. at the option of the Participant.

AND, the purchase of initial or additional life insurance will be subject to the following limitations:

- 3. N/A. No limitations.
- 4. Limitations (select all that apply):
 - a. Each initial Contract will have a minimum face amount of \$ _____.
 - b. Each additional Contract will have a minimum face amount of \$ _____.
 - c. The Participant has completed _____ Years (or Periods) of Service.
 - d. The Participant has completed _____ Years (or Periods) of Service while a Participant in the Plan.
 - e. The Participant is under age _____ on the Contract issue date.
 - f. The maximum amount of all Contracts on behalf of a Participant may not exceed \$ _____.
 - g. The maximum face amount of any life insurance Contract will be \$ _____.

- C. **Plan Expenses.** Will the Plan assess against an individual Participant's account certain Plan expenses that are incurred by, or are attributable to, a particular Participant based on use of a particular Plan feature?
- a. No.
 - b. Yes.

- D. **Rollover Limitations.** Will the Plan accept rollover contributions and/or direct rollovers of distributions from the sources specified below?
- a. No.
 - b. Yes.

AND, indicate the sources of rollovers that will be accepted (select all that apply)

- 1. **Direct Rollovers.** The Plan will accept a direct rollover of an eligible rollover distribution from: (Check each that applies or none.)
 - a. a qualified plan described in Code Section 401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), excluding after-tax employee contributions.

401(a) Plan

- b. a qualified plan described in Code Section 401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), including after-tax employee contributions.
 - c. a plan described in Code Section 403(a) (an annuity plan), excluding after-tax employee contributions.
 - d. a plan described in Code Section 403(a) (an annuity plan), including after-tax employee contributions.
 - e. a plan described in Code Section 403(b) (a tax-sheltered annuity), excluding after-tax employee contributions.
 - f. a plan described in Code Section 403(b) (a tax-sheltered annuity), including after-tax employee contributions.
2. **Participant Rollover Contributions from Other Plans (i.e., not via a direct plan-to-plan transfer).** The Plan will accept a contribution of an eligible rollover distribution: (Check each that applies or none.)
- a. a qualified plan described in Code Section 401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan).
 - b. a plan described in Code Section 403(a) (an annuity plan).
 - c. a plan described in Code Section 403(b) (a tax-sheltered annuity).
3. **Participant Rollover Contributions from IRAs:** The Plan will accept a rollover contribution of the portion of a distribution from a traditional IRA that is eligible to be rolled over and would otherwise be includible in gross income. Rollovers from Roth IRAs or a Coverdell Education Savings Account (formerly known as an Education IRA) are not permitted because they are not traditional IRAs. A rollover from a SIMPLE IRA is allowed if the amounts are rolled over after the individual has been in the SIMPLE IRA for at least two years.

Council member Kroesing made a motion to approve a Governmental 401(a) Plan for the David City employees with Moravec's (Security Benefit Retirement Program). Council member Rogers seconded the motion. Voting AYE: Council members Scribner, Smith, Rogers, Kroesing, Vandenberg and Svoboda. Voting NAY: None. The motion carried.

Mayor Zavodny stated that he wanted to give the swimming pool employees that were present an opportunity to address the council.

Swimming Pool Manager Yvonne Pence stated that the employees that were helping to start up the pool this year got their first pay stub and realized that the pay wasn't the same as the pay scale that was posted at the swimming pool. They were under the assumption that the pay scale was going to be the same as last year. After she opened the pool and hired the lifeguards there was a new pay scale in her mail box.

Mayor Zavodny asked if they had any information about what other towns were paying because he had talked to Jon Holmes earlier in the day and Jon said that he had done a comparison with other towns and Interim Clerk Comte called and e-mailed other towns that day to get pay comparisons. Mayor Zavodny stated that our findings are that we are paying significantly higher than almost every other town that was checked. He stated that we compared with Wilber, Osceola, Seward, Superior, Ashland, Wahoo, Waverly, Geneva and Schuyler. Our pay was higher on all of them except for Geneva and Waverly, however that one was pretty close. Mayor Zavodny stated that was part of the justification and defense for where it is.

Council member Kroesing stated that the council asked Jon for ways to save some money and he brought this pay scale to us using guidelines set forth by state and federal governments for seasonal and part-time help. He was able to do just that. He was able to save us around \$5,000.00 and yet still kept us above where the other towns were.

Mayor Zavodny stated that he wanted the swimming pool employees to be clear that they understand that the operation of the pool is a governmental activity. Mayor Zavodny said, "It's not something that's going to pay for itself or generate enough revenue to pay its expenses. It's a quality of life issue that as a community we provide. We really try to scrutinize everything that we can on that. Whatever we decide here tonight, but we know the value that you bring to us by working for us and keeping that pool that a lot of people enjoy."

Lifeguard Anna Fichtl stated that as they were lowering their wages, they still have a lot of expenses that come directly from their pocket. She stated that she is a third year guard and a second year WSI (Water Safety Instructor). So each year she would get a little more, which she felt that if you have another certification that you deserve. She also stated that every year their fees keep going up. The Red Cross just raised the fee for cards from \$3 to \$7 and there is a \$150 fee for the WSI and a \$150 for LGT and \$35 for CPR and they also pay for the swimming suits every year.

Mayor Zavodny stated that to be fair and to compare apples to apples there are such things as clothing reimbursements. I don't see anything where anyone reimburses for certifications.

Interim Clerk Comte stated that at the end of the year, if the guards are in good standing and they turn in a receipt, we will reimburse them for half and we have done that for several years. That does not cover CPR, it is just for certifications.

Mayor Zavodny stated that a little less than one-half of one month's wages is paid to pay all of your certifications annually.

Mayor Zavodny asked Swimming Pool Manager Pence how many lifeguards they employ at the pool.

Swimming Pool Manager Pence stated that they have 16 lifeguards and 5 in the office.

Mayor Zavodny asked how they treat the office staff and don't have all of these certifications.

Interim Clerk Comte stated that the office staff positions start at minimum wage and they get a little increase for every year that they are there.

Mayor Zavodny stated that if you end the year in good standing and you get reimbursed for half of your certifications then the most that your out-of-pocket expenses would be is \$185.

Anna Fichtl said, "Plus your suits."

Former City Administrator Jon Holmes stated that the information that he used to work through that came from the League of Nebraska Municipalities. Just for comparison, he quickly did the math and not including David City, the average starting salary for a lifeguard is \$7.21 while in David City the starting salary is \$7.43 and \$8.21 is the average for the WSI lifeguard and he would acknowledge that is a little low. The assistant manager position is \$8.42 average compared to David City's \$10.68 and for the manager it's \$9.90 average compared to \$11.10 that David City starts out. As was said earlier, federal fair labor standards act allows for seasonal, recreational, part-time employees to get certification and pay sub-minimum. There are a few of these that start out at \$6.75 per hour. This is looking at trimming costs and the biggest expenditure there is the employee's salaries.

Swimming Pool Manager Yvonne Pence stated that she wanted to stand up for her guards because they were under the assumption when they were hired that they were under the same pay scale that they had last year and if they would have been informed, maybe, of the new pay scale it would be different. She had several guards that said that they had other options that they could have gone to but they had been with us for three or four years and some of them even went and spent another \$150 for them to be certified to be water safety instructors and now they are only going to be making a penny more an hour. They are really hurt.

Carol Brehm asked what the difference in the budget was for salaries between last year and this year.

Mayor Zavodny stated that we've looked at everything that we are doing. We lost aid to cities to the tune of \$20,000 from the legislature. It's a rough deal.

Council member Rogers stated that he felt that they should reimburse the guards for one swimsuit for the season.

Mayor Zavodny asked how much a swimsuit cost.

Council member Kroesing stated that he saw \$90 in the Ordinance prior to this one.

Mayor Zavodny stated that the compromise would be to leave the pay scale the way it was approved by the Council in December and to add reimbursement for a swim suit.

Mayor Zavodny asked if all the guards had purchased their suits for the season.

The guards all responded that they had all purchased their suits but were not certain that they all still had receipts for them.

Mayor Zavodny said, "This is going to be one of those great life lessons here. One is how government is going to work and you might not like that lesson at the end of tonight, and the other thing is it really comes down to a personal decision for each one of you of is what we ask you to do worth what we are willing to pay you. I think that's a decision that none of us can answer for you. You have to answer it for yourself. I think we understand the issue clearly and it's time to just decide on it."

Council member Rogers made a motion to pay a \$90 stipend for swimsuits for the lifeguards for this year only and after this year a receipt will be needed for reimbursement. Council member Kroesing seconded the motion. Voting AYE: Council members Rogers, Kroesing and Scribner. Voting NAY: Council members Svoboda and Smith. Council member Vandenberg abstained from voting. (This was reconsidered at the Special Council Meeting on 6-22-11).

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Rogers seconded the motion. Voting AYE: Council members Rogers, Scribner, Svoboda, Smith, Vandenberg and Kroesing. Voting NAY: None. . The motion carried and Mayor Zavodny declared the meeting adjourned at 8:45 p.m.

Mayor Alan Zavodny

Interim City Clerk Tami L. Comte



CERTIFICATION OF MINUTES
June 8, 2011

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 June 8, 2011; 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