

## CITY COUNCIL PROCEEDINGS

September 8, 2010

The City Council of the City of David City, Nebraska, met in open public session in the meeting room of the City Office, 557 N 4<sup>th</sup> Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on September 2<sup>nd</sup>, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Dana Trowbridge, Council President Gary Kroesing, Council members Gary Smith, Bill Scribner, Nick Hein, Mike Rogers, City Attorney Jim Egr, and City Clerk-Treasurer Joan Kovar. Council member Bill Yindruck was absent.

Also present were: Scott and Janice Boyd, Tom and Roy (Rose Ann) Hayes, Carolyn Yates, Susan Bongers, Rudy Svoboda, Jeff Yates, Janis Cameron, Eldon Coufal, Phil Lorenzen of D. A. Davidson, Carol Brehm, Alan Zavodny, John Vandenberg, Keith Marvin, Matt Rief of Olsson Associates, Zoning Administrator Roger Kotil, and Beth Klosterman.

The meeting opened with the Pledge of Allegiance.

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

The minutes of the August 11<sup>th</sup> and August 30<sup>th</sup>, 2010 meetings of the Mayor and City Council were approved upon a motion by Council member Kroesing and seconded by Council member Rogers. Voting AYE: Council members Scribner, Smith, Hein, Rogers, and Kroesing. Voting NAY: None. Council member Yindruck was absent. The motion carried.

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

Mayor Trowbridge called for Committee and Officer Reports. Mayor Trowbridge stated Sheriff Mark Hecker submitted the Butler County Sheriff's activity report for David City for the months of May, June, and July and they were very nicely done. Council member Hein agreed stating that they were very in-depth reports.

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

Bob Wright is requesting permission to utilize city property upon which to construct a handicap ramp on the sidewalk at 532 "D" Street for Nebraska Health and Human Services who will be occupying the building. Council member Hein stated that there is already one existing

ramp on the south side of the building so the second one would not protrude any or much farther to the south than the present one and ADA requirements need to be met. Therefore, Council member Hein made a motion to allow the construction of a handicap ramp on the sidewalk at 532 "D" Street. Council member Rogers seconded the motion. Voting AYE: Council members Kroesing, Smith, Scribner, Rogers, and Hein. Voting NAY: None. Council member Yindrick was absent. The motion carried.

A request was received from Jose Ivis Padilla for an off street parking stall in front of his home at 348 6<sup>th</sup> Street; the garage is located off of the alley. Mayor Trowbridge stated that we dealt with this in the last year or so for a lady who wanted to do a similar project on her parcel for parking; a discussion was held with that party about her inability to tell people they couldn't park there because it is on city property and not directly in front of a structure or garage and so it becomes public parking. Council member Hein asked if Mr. Padilla was aware of that as he makes his request. City Clerk Kovar stated that she explained that to him and he seemed to understand that concept. With that understanding, Council member Hein made a motion to grant the request of Jose Ivis Padilla to construct an off-street parking space on the city parkway directly in front of his home at 348 6<sup>th</sup> Street. Council member Scribner seconded the motion. Voting AYE: Council members Kroesing, Scribner, and Hein. Voting NAY: Council members Rogers and Smith. Council member Yindrick was absent. The motion carried.

Council member Hein made a motion to move up agenda item #13 – Consideration of the request to establish an ordinance prohibiting dog rescues, stating the number of dogs you can have in your household and placing something in the ordinance prohibiting vicious animals. Council member Kroesing seconded the motion. Voting AYE: Council members Scribner, Rogers, Smith, Hein, and Kroesing. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Tom Hayes stated, "I received the "request for future agenda" from Steve Byers, filled it out, and presented it to the City Administrator. The problem being a neighbor at the corner of 13<sup>th</sup> & "E" Street has quite a few dogs and we've been told she wants to start a dog rescue. She's had problems in the past keeping dogs in. We feel that some of those dogs are vicious or potentially vicious. We really have no idea how many she has over there; we've counted any where from four up to eight. We've been told there have been numerous dogs in the residence and on the property. We just want to ask the City to consider eliminating any type of dog rescue in the city limits, possibly look at something, I think there might be something in the books the way I understood, as far as the number of dogs you can have, and then maybe addressing something about some vicious animals. I'm not really interested in the breed of the dog, but any type of vicious animal like other cities might have. Your consideration of this would be very appreciated."

City Administrator Holmes stated, "For reference I went back and took a look at this because I have been receiving quite a bit of mail about this and also some phone calls, so I went back and looked at all the municipal codes and also the zoning codes and so what I found is basically on Zoning Code 2.02.242 Kennel, Private – shall mean an establishment where four or more dogs or cats, or combination thereof, other household pets, or non-farm/non-domestic animals at least six months of age, excluding vicious animals, are raised, bred, or boarded. So my interpretation is that anytime you have four or more it's classified as a kennel. Then in Section 5.05 TA: Transitional Agriculture District, 5.05.03 Conditional Uses #8 says: Private or commercial kennels and facilities for the raising, breeding and boarding of dogs and other small

animals, provided: - a. No structure or building is located closer than 300 feet to any residential use or district; and b. Minimum lot area of four acres. So, that limits where you can do it. There was an also an issue with fences; Section 8.03.03 Electric Fences stipulates that no electric fence shall be constructed or maintained within the City of David City or within its extraterritorial zoning jurisdiction except in the Transitional Agriculture District or Residential Agriculture District. This provision does not apply to invisible fence systems. That is in a Residential area so she can't have that. Then also Section 8.12 talks about some items as far as the keeping of animals. Municipal Code Chapter 6, Section §6-110 talks about vicious animals; basically upon the complaint of one (1) or more affected persons, filed with the Municipal Police Department, that any dog owned by the person named in the complaint is committing injury to persons or property, or is an annoyance, offensive or unhealthy, the Municipal Police Department shall investigate the complaint and, if in their opinion the situation warrants, shall notify the owner to dispose of the dog; and also Chapter 6 -113 Dogs; Barking and Offensive states upon the complaint of one (1) or more affected persons from different households, that any dog owned by the person named in the complaint is an annoyance or disturbance, or otherwise violates the provisions of this section of the Municipal Code, the Police shall investigate the complaint and, if in the opinion the situation warrants, shall notify the owner to silence and restrain such dogs. Basically what I am showing is that we have all of the ordinances already in there. I do not feel that we need to write a new ordinance on there we just need to enforce the ones that are already there. By way of that, Chief McPhillips is fully aware of this and he has been given a copy of these rules and regulations; the resident of the property that has the dogs, she has been given a copy also and he is following up with her on that. When we spoke this morning in our management meeting he basically said our next step is to cite the person and go from there and court intervention is the next step."

Janice Boyd stated, "The dogs are out all the time now; they bark day and night. She doesn't put them inside now and I think it's probably just a little bit of retaliation on her part letting us enjoy them just a little bit more."

Council member Hein stated, "I can attest, quite often in the evening I will ride past there on my bicycle, part of my daily routine, and yes, when I go by it's like a trigger; dog after dog after dog behind that fence; you hardly ever see them but they're there."

Mayor Trowbridge stated, "The question I have for City Attorney Egr is, she is in violation of the zoning regulations, how easy are they to enforce versus municipal code?"

City Attorney Egr stated, "I think the municipal code is a lot easier because if the Chief of Police or the officers have a right to take any action on there and then go to the County Attorney's office to file criminal action."

Mayor Trowbridge stated, "And that would be my only suggestion because in code we did not talk about how many you could have. The zoning portion is very difficult if you are able to enforce it at all."

Rose Ann (Roy) Hayes stated, "I talked to state officials on three different occasions and the last time I spoke to them they told me that if she corrected a couple of things that they wanted corrected that they were going to issue her a license and I can give you the name and phone numbers of them. I asked them "if she was in violation of city code or zones, you mean to tell me you would still give her a dog rescue license?" He told me "yes, because we don't

care what the city ordinances are, only whether she complies with theirs". If she fixes what they ask her to fix, which one of them is the electric fence and the holes in her fence, then she is going to be given a state license, they don't care what you guys say. The other factor that we have here, and Janice (Boyd) is the guardian angel here, one of our huge things here is we have been putting up with this for several years but the big factor right now is the safety issue. We were told really not to address that, but we have the Aquinas bus drops off a large amount of children on 11<sup>th</sup> & "E" that walk that route. It is no longer safe for those kids to go by those dogs. If you go by that premise you are going to see holes in the fence; the only thing that is keeping those dogs in is the electric fence. Now the electric fence is going to come down and those kids are in danger; there are pictures too by the way."

City Attorney Egr stated, "I don't care if the State gives her a license on there she is still in violation of the zoning regulations. Waiving that license in front of the City does no good because that licensing part there will not come in and defend her in any type of action that we go after. Having a license is not going to protect her."

Rose Ann (Roy) Hayes stated, "I am afraid for the kids; I even told an old lady not to walk down the street the other day because she was using a walker and I felt that if the dogs come through the hole she was a goner; and Janice stands outside to protect those kids. .

City Attorney Egr stated, "That doesn't take away from the city code that says if they become offensive....;it is no difference than a liquor license, if somebody has fights and like that all the time, just because they have a liquor license that doesn't necessarily mean that they can have fights at the bars."

Council member Kroesing stated, "So do I hear this correctly that we have enough teeth?" City Attorney Egr stated, "I think so."

Council member Smith stated that we should look at other places around town besides just this one. Smith has pit bulls in his neighborhood that keep him up at night and he worries about them getting loose also. City Attorney Egr stated that the Council needs to let the Police Chief know that they will back him up if he goes after dog issues.

Mayor Trowbridge stated, "I think we need to send a message that we fully respect this lady's desire to take care of dogs in a rescue situation, but, that means to move into a transitional agricultural area or a total agricultural area and it is in our zoning rules."

Police Chief McPhillips will address this issue and others around town and be pro-active about barking dogs.

Tom Hayes stated, "I think I can speak on behalf of everybody affected up there and say we appreciate it very much."

Mayor Trowbridge stated, "We certainly want a safe community and we want one that people can feel good about living in; all areas of it; and we also have respect for nice dogs."

Mayor Trowbridge declared the Public Hearing open at 7:30 p.m. the levy of special assessments in Street Improvement District 2008-1 ("D" Street) to review any written objections and allow public comment and objections.

Phil Lorenzen of D.A. Davidson & Co. stated, "The special assessments have been determined by Olsson Associates; Matt is here tonight to address any concerns as well. The process is real simple: the special assessments by the proposed resolution would be payable in ten installments, the first installment would be due in fifty days from this meeting so the first installment is due by October 28, 2010, and the balance of the installments are due in nine equal installments. The anniversary date will be each year on this meeting date which is September 8<sup>th</sup>, interest is recommended at a 5.5% rate that is just a touch above the City's borrowing cost for the project. Special assessments can be prepaid at any time in accordance with Butler County's regulations. I am going to guess that the County Treasurer will want the special assessment to be paid in full; if you pay the full assessment there is no additional interest that cuts off at the time that you paid them. The delinquent interest, which is painful, is set by State Statute which is fourteen percent (14%) so people are encouraged to pay those on a current basis. So five and a half percent (5.5%) simple interest; prepay anytime you wish to do so and follow the regulations and procedures of the County Treasurer's office."

Mayor Trowbridge asked, "If for some reason the council decided to lower any of these, where does that money come from?"

Phil Lorenzen stated, "Any special assessment that is reduced for some cause that might be determined to be appropriate would come from the general levy of taxes within the City; the general levy of taxes against all the properties within the city."

Matt Rief of Olsson Associates stated, "I did receive a call from Eldon Coufal of Eldon's Body Shop and I will make the recommendation to reduce his sidewalk assessment. There is 18' of sidewalk there; I had assessed it all the way thru his property (50') to reduce it down to 32', so that takes it down from 1,293.50 down to \$827.84." This will reduce the assessment from \$5,861.50 to \$5,395.84.

Mayor Trowbridge stated, "We have had several rains since it was completed, a couple of them of some intensity, and I wish the entire community drained as well as "D" Street drains west of 4<sup>th</sup> Street. Hopefully some day it will drain that nicely east of 4<sup>th</sup> Street. So Matt, thank you, it works. If there are no more comments we will close our public hearing but I want to make sure everyone has a chance to speak; and with that at 7:35 p.m. we will close our public hearing."

Council member Kroesing made a motion to set the "D" Street Special Assessments interest rate at 5.50% and making the correction that assessments shall become due in fifty (50) days. Council member Smith seconded the motion. Voting AYE: Council members Hein, Rogers, Scribner, Smith, and Kroesing. Voting NAY: None. Council member Yindrick was absent. The motion carried.

Council member Hein made a motion to pass and approve Resolution No. 10 – 2010 setting the Street Assessments for Street Improvement District No. 2008 – 1 ("D" Street) noting that the first installments are due 50 days from the statement date, and noting the correction for Eldon Coufal d.b.a. Eldon's Body & Paint which assessment was lowered to \$5,395.84. Council member Scribner seconded the motion. Voting AYE: Council members Kroesing, Rogers, Smith, Scribner, and Hein. Voting NAY: None. Council member Yindrick was absent.

**RESOLUTION NO. 10 - 2010**

RESOLUTION MAKING ASSESSMENTS IN STREET IMPROVEMENT DISTRICT NO. 2008-1 IN THE CITY OF DAVID CITY, NEBRASKA.

WHEREAS, Notice has been published as provided by law concerning the levy of special assessments in Street Improvement District No. 2008 – 1 (“D” Street between 4<sup>th</sup> Street and the Burlington Northern Santa Fe Railroad) in the Banner Press, a newspaper published and of general circulation in the City of David City, Nebraska, on August 5, 2010, August 12, 2010, August 19, 2010, August 26, 2010, and September 2, 2010, and a copy of said Notice has been mailed to all resident and non-resident owners of property in said District as provided by law, and

WHEREAS, a hearing has been conducted as provided by law relative to the levy of special assessments in said District proposed to be levied against said lots and parcels of ground on account of the construction of the improvements hereinbefore described. The Mayor and Council have, at this session, heard all persons who desire to be heard in reference to the valuation of each lot to be assessed and the special benefits or damages thereto and have considered the advice of the engineers in charge of the construction and improvements.

WHEREAS, the Mayor and City Council find and determine that no lot or parcel of land in Street Improvement District No. 2008 – 1 (“D” Street between 4<sup>th</sup> Street and the Burlington Northern Santa Fe Railroad) has been damaged by the construction of said improvements, and that the amount of benefits specially accruing to each lot and parcel of land by reason of the construction of said improvements at least equals the amount to be assessed against each lot or parcel of the land to pay the cost of said improvements.

NOW BE IT RESOLVED, there is hereby levied and assessed upon the several lots and parcels of land in Street Improvement District No. 2008 – 1 (“D” Street between 4<sup>th</sup> Street and the Burlington Northern Santa Fe Railroad), special assessments to pay the cost of the “D” Street paving in the amount in dollars and cents set out as follows which are made a part hereto:

**Street Improvement District 2008 – 1  
“D” Street Paving**

PARCEL DESCRIPTION ASSESSMENT	OWNER	AMOUNT
325 3 <sup>rd</sup> Street and 385 3 <sup>rd</sup> Street David City, NE 68632 Lots 13, 14, & No. ½ of 15, E ½ of Vacated 3 <sup>rd</sup> Street, So. 15’ of D Street, Block 33, Original Town of David City Lots 1, 4, 5, 8, 9, and 12 and vacated St. (50 x 300 10 x 140), Block 34, Original Town of David City Lots 9 & 12 and S 25’ of Lot 8, Block 23, Original Town of David City	Henningsen Foods Inc.	\$60,959.60

340 D Street, Lots 19 – 24, Block 24, Original Town of David City	Didier Grocery Inc.	\$16,412.20
397 4 <sup>th</sup> Street Lots 1 – 4, Block 33, Original Town of David City	First National Bank of Omaha	\$16,412.20
211 D Street E 129.5' of Lots 2, 3, 6, 7, 10, & 11, Block 34, Original Town of David City	Farmers Cooperative Co. – Brainard Frontier Coop Company	\$11,831.12
77' Assessable Sidewalk Frontage		<u>\$1,991.99</u> \$13,823.11
220 D Street E 50' of Lots 10 & 11, Block 23, Original Town of David City	Eldon Coufal Eldon's Body and Paint	\$5,395.84
Lots 2, 3, 6, & 7 and the W 90' of Lots 10 and 11, Block 23, Original Town of David City, NE Plat #120001008	CB&Q Railroad Burlington Northern Railroad	\$11,781.62

**Street Improvement District 2008-1:..... \$124,784.57**

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BE IT FURTHER RESOLVED, that the said assessment upon each lot and parcel of land is not in excess of benefit thereto specially accruing from the construction of said improvements, and the special assessments have been apportioned among the several lots and parcels of land subject to assessments in proportion to the special benefits accruing to said lots and parcels of and respectively from such improvements.

BE IT FURTHER RESOLVED, that all special assessments above provided for shall become due in fifty (50) days after the date of the passage of this resolution and may be paid within that time without interest, but if not so paid, special assessments in Street Improvement District No. 2008-1 shall bear interest thereafter at the rate of five and one/half per cent (5.50%)

per annum from the date of this resolution until delinquent. Such assessments shall become delinquent as follows: One tenth of the total amount shall become delinquent fifty (50) days after such levy; one tenth in one year; one tenth in two years; one tenth in three years; one tenth in four years; one tenth in five years; one tenth in six years; one tenth in seven years; one tenth in eight years and one tenth in nine years. Delinquent installments shall bear interest at the rate provided by law (fourteen per cent (14%) per annum) until paid and shall be collected in the usual manner for the collection of taxes. Installments may be prepaid at anytime at the option of the property owner as provided by law.

BE IT FURTHER RESOLVED that a certified copy of said assessment schedules be filed by the City Clerk/Treasurer with the County Treasurer and the County Clerk of Butler County, Nebraska, as provided by law for entry on the proper tax rolls.

Passed and adopted this 8<sup>th</sup> day of September, 2010.

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Mayor Dana Trowbridge

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City Clerk-Treasurer Joan E. Kovar

As the only remaining agenda item was an 8:00 p.m. Public Hearing, Mayor Trowbridge declared a break at 7:41 p.m. The meeting reconvened at 8:00 p.m.

Mayor Trowbridge declared the Public Hearing open at 8:00 p.m. concerning an application to the Nebraska Department of Economic Development for a Community Development Block Grant. The City is requesting \$300,000.00 for the Thorpe Opera House Renovation: Phase 1 – Building Stabilization. The City Council passed Resolution No. 8 – 2010 on July 14, 2010 showing support for the CDBG Grant Application on behalf of the Thorpe Opera House with the City acting as the conduit for the grant money. The City is an entity that can request the grant money.

Economic Development Director Keith Marvin stated, “Through the Tourism Development Fund the City can ask on behalf of the Thorpe. This is for tourism dollars under the guidance of historic preservation; that is one of the eligible categories. The reason this area is eligible, the building would be eligible, is because the downtown has been declared blighted and substandard; we don’t meet the low to moderate income levels so we are going after under

the natural objective of slum and blight. \$300,000.00 is the maximum grant that we can get. \$12,000 of that will go to Northeast Nebraska Development District to pay for the grant administration. I've already contacted them and they are in tune with doing this if we need to; if we are fortunate enough to get the grant. 25% matching on this is coming directly from a grant/loan from the United States Department of Agriculture (USDA) Rural Development fund which we've already been notified that we have. We were just notified that we received \$101,000 total from the USDA to help with this project. We don't get that money until we come up with the other \$300,000.00. What we are asking for is, you have to have a public hearing in order to sign off on this, we are asking the Council to authorize the Mayor to sign off on this wherever I've tagged and for the City to go ahead and submit this on behalf of the Thorpe. Any questions?"

City Clerk Kovar stated, "And you said once we sign off on this everything goes through you?"

Keith Marvin stated, "Well, you'll still have the standard things that you'll have to deal with if you got a grant. Northeast is going to be doing the admin, so what we said with the Thorpe is that this would be simply no cost to the City. The advertisement, we took care of all that cost, the Banner sent us the bill, all that effort, all that stuff, so I mean we are intending to pay for the costs that may be incurred. You're going to have the standard filing that you're going have to do Joan and that would be about it."

City Clerk Kovar stated, "So I'm not expected to keep track of the payment requests and all that stuff?"

Keith Marvin stated, "Well, I'm hopeful that Northeast is going to take care of taking care of all of the interviews and all that stuff. We will probably have to run any pay requests and drawdowns through the council on your normal agenda to approve those drawdowns."

City Clerk Kovar stated, "So am I responsible for the bookkeeping of those drawdowns?"

Keith Marvin stated, "My understanding would be Northeast should be doing that for the \$12,000.00. They are getting free money because I wrote the grant, they didn't have to, and they're basically getting the money."

Council member Hein stated, "Any other concerns Joan? You asked that for a reason."

City Clerk Kovar stated that if she is responsible for the accounting of these funds she wants to know that ahead of time and be advised of what she is supposed to be keeping track of and how. She is tired of people saying the city is just a pass through, there is nothing she has to do, and then later she is expected to show all of the accounting and record keeping for the project. Keith Marvin stated that he would get Jared of Northeast Nebraska Economic Development District to come and discuss this with Clerk Kovar.

City Attorney Egr asked if there was anyway we could get a letter from Northeast Nebraska Economic Development District stating what they will do and Mayor Trowbridge added and what they expect us to do.

City Clerk Kovar stated that she is not opposed to the project but if there is something

she is supposed to be doing she wants somebody to tell her upfront instead of waiting until the project is done and then expecting her to provide the necessary paperwork. Keith Marvin stated that it will probably take two or three months to get a response to their request so that will give us time to get questions answered.

There being no further comments or questions Mayor Trowbridge closed the Public Hearing at 8:08 p.m.

Council member Kroesing made a motion to authorize Mayor Trowbridge to execute all necessary papers concerning an application to the Nebraska Department of Economic Development for a Community Development Block Grant requesting \$300,000.00 for the Thorpe Opera House Renovation: Phase 1 – Building Stabilization. Council member Scribner seconded the motion. Voting AYE: Council members Hein, Rogers, Smith, Scribner, and Kroesing. Voting NAY: None. Council member Yindrick was absent. The motion carried

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Hein seconded the motion. Voting AYE: Council members Scribner, Rogers, Smith, Hein, and Kroesing. Voting NAY: None. Council member Yindrick was absent. The motion carried and Mayor Trowbridge declared the meeting adjourned at 8:09 p.m.

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Mayor Dana Trowbridge

ATTEST:

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City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES  
September 8, 2010

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of September 8, 2010; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

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Joan E. Kovar, City Clerk