

CITY COUNCIL PROCEEDINGS

November 18, 2009

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 November 12th, 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 members Gary Kroesing, Nick Hein, Mike Rogers, Bill Scribner, and Bill Yindrick, City Administrator Joe Johnson, City Attorney Jim Egr, and City Clerk-Treasurer Joan Kovar. Council member Gary Smith was absent.

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 and Resolution No. 2-2008 establishing rules and procedures for public participation at city council meetings.

The minutes of the October 14, 2009 meeting of the Mayor and City Council were approved upon a motion by Council member Kroesing and seconded by Council member Yindrick. Council member Scribner noted a correction on the Government Subcommittee Meeting minutes. Voting AYE: Council members Scribner, Hein, Rogers, Kroesing, and Yindrick. Voting NAY: None. Council member Smith was absent. The motion carried.

Mayor Trowbridge asked for Petitions, Communications, and Citizens' Concerns. Mayor Trowbridge stated that he had a couple calls from citizens who wanted to discuss personnel issues during Citizens' Concerns; however, legal counsel had advised him that that is an inappropriate action. City Attorney Egr affirmed that.

Steve Gaston stated: "There are many issues that need to be addressed; however, the main one is the operation of this city council and possible termination and non reappointment of department heads. The citizens of this community may not realize, but they will shortly, is that we do have an alternative to this city council and the city administration. The citizens of this community can, and are going to start passing their own city ordinances. Don't laugh it is quite legal Mr. Mayor. You see this petition; It is very simply called "city initiative and referendum petition", 20% of the registered voters file this petition; their signatures are on this petition. We can initiate our own city ordinances. 20% of the signatures must be presented to the city council. The City Council does not vote those ordinances in, or referendums, it will go to vote automatically; if you don't believe me check with the Secretary of State, I spent several hours with him. The citizens of this community; I am going to submit several city ordinances actually to them for their approval on petition. One would be to eliminate the authority of the Mayor that basically residing over the city council meetings and the tie breaker. There will be no decision on your part any longer as to who is going to be employed with the City. The second one I am going to propose is the dissolving of the City Administrator's position. I hope this is funny. It will work out. Oh, by the way, 20% of the signatures that are going to be required come to a little

over 400. Does that number mean anything to you? We will suggest that we combine the duties of the City Administrator and the City Clerk's office for a salary of \$70,000 if Mrs. Kovar is willing to do so at a later date. This will save the city approximately \$50,000 a year on salaries on the city administrator. We will also pass a resolution or a city ordinance for our own police department; we will not leave this decision up to you. The building that is proposed for our police department at this point in time; the break room is larger than the proposed office of the City Police Chief. The overall area for the entire police department to operate in is less than that of the city council chambers. This is not adequate. You have potentially tried to dissolve our police department and it will no longer happen. The citizens of this community are about to take this into their own hands. If you think this is a joke. Us hillbillies and monkeys are about to respond, we're not taking it anymore; it's just not going to happen. So gentlemen I am going to urge you tonight that your actions, what you do tonight may most definitely not affect the future of this community however they will affect your future within this community. So pay attention and I heed you to listen to the people of this community and start paying attention to their concerns as these are the people that will remove you from office or that can completely restrict your authority."

Mayor Trowbridge stated: "Mr. Gaston if you are going to stand up there and threaten us it's time for you to sit down and be quiet. Thank you."

Jim Redler stated: "As far as speaking about anything as far as employees for the City; we as citizens pay the taxes to pay the wages of the employee and we observe how they work. I don't think you can keep us from making comments for or against the employee, so therefore, I have some opinions about some of the actions that are going on and I want to express them, and so therefore, unless Mr. Egr wants to stop me I am going to go a little bit farther."

City Attorney Egr stated: "I am going to suggest Mr. Redler that you are in error about wanting to discuss personnel matters as those areas of citizens concern, because, first of all there is nothing before this council on anybody's personnel matters that would be a public nature. The Open Meetings Act specifically provides that personnel matters be taken up in closed session in order to avoid harm to reputation and character unless an action is taken by the council, mayor, or city administrator that would then justify that particular employee to request an appeal hearing according to the handbook and the Open Meetings Act; that is provided in there. I think you are premature on reacting until something does come before this body to act on. I know you have requested personnel records and I would point out to you and I have a copy here, so that this way it cannot be said that I am lying, that there is a specific Statute 84-712.05 that says "the following records, may be withheld from the public by the lawful custodian of the records: (7) personal information in records regarding personnel of public bodies other than salaries and routine directory information. You can't be asking for that kind of records; you are too early in making these kinds of comments."

Jim Redler stated that he was not going to ask about personnel records; he just wanted to make some comments concerning the suspension of Park/Auditorium Supervisor Bill Buntgen. Jim Redler stated: "It is public knowledge. You cannot keep my mouth shut. I am just going to make comments about his performance. He is an employee, the citizens pay the taxes that pay his wages and I've had a lot of people talk to me and they are not complaining about his performance; in fact it is all positive. As far as I know, anything he has done down there has been for the good of the City including trying to get tax money for the lakes, football field, auditorium, swimming pool, expanding the baseball and soccer, and even including the senior citizens in the community under that program, and so my question is he's done this for a

long time, it's been over a year that this information has been out that he's been trying to promote, so why now? It makes me wonder what the real answer is.

Dr. Jack Kaufmann stated: "A friend of mine was wounded a week ago today, Bill Buntgen, he's hurting and I'm hurting. I've known him for years, he has been a good worker for the City, he is an honorable man and I hate to see him hurt as he was hurt. I would hope his position will be restored and maintained. I hope Bill will keep his job and I hope he will be paid the weekly salary that was taken away from him. Jim Redler said part of Bill's salary is paid by the citizen's taxes; so is the salary of you folks at the front table. These people and I pay part of your salary so I ask you to listen. My question for Joe is "have you had one complaint about Bill Buntgen's performance?" You told me Monday, No, you hadn't. Since Monday morning have you had any complaints? He can't say.

Mayor Trowbridge stated: "Our legal counsel has advised us that we can't respond. That is why this is an unfair forum."

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

Mayor Trowbridge called for Committee and Officers' Reports in addition to those written reports contained in the Agenda packet. Mayor Trowbridge stated: "We have a special certificate of appreciation to award this evening. We have a gentleman who has been with the City for twenty-five years (25) years; has given reams of very good legal advice; has kept the city out of trouble through those twenty five years; has been a credit to the City of David City, is someone that we respect and someone that we look to for guidance; and for that I would like to thank you Mr. Egr, it has been a pleasure".

Bill Scribner made reference to the police department report that stated "Nine more arrest warrants for charges of drug dealing have been issued as a continuation of the RAP Drug Task Force's investigative efforts." Scribner contacted the Governors Office and begged them not to cut funds for that program. Scribner stated: "it has done wonders for this community and I thank Chief Sunday for his involvement in getting that off of our streets." There were no additional reports.

Council member Hein made a motion to advance to agenda item #16 - Award presentations of the Nebraska Community Improvement Program Founders Award presented to: The Butler County Development Board; Henningsen Foods Inc.; and Timberline Energy LLC. Council member Kroesing seconded the motion. Voting AYE: Council members Scribner, Yindrick, Rogers, Kroesing, and Hein. Voting NAY: None. Council member Smith was absent. The motion carried.

City Administrator Joe Johnson explained that the Nebraska Community Improvement Program has been going on for quite a while. It is a Governor's award that is awarded to communities for their accomplishments throughout the year. This year, the City of David City applied for the Founders Award that is the top award awarded by the Governor of this great state in the Nebraska Community Improvement Program. We were lucky enough and grateful enough to receive the Founders Award for the whole state of Nebraska for this year. We received the award for the Methane Project. Mayor Trowbridge stated that this was a collaborative project and presented plaques to Darrell Kahler representing Henningsen Foods;

Keith Marvin representing the Economic Development Board, and Ryan Nelson representing Timberline Energy.

Mayor Trowbridge stated: "Darrell Kahler was at the heart of this, sitting in his office one day when two strangers walked in and asked how much natural gas they used and he happened to know the answer and it was quite a bit, and that is what started this project. Darrell thank you for your contributions as an individual and also as a company."

Ryan Nelson representing Timberline Energy stated: "This award is really and truly an honor for Timberline Energy to receive and if it wasn't for the City of David City helping us to push this through we wouldn't have this award, and my hats are off to you guys you did an awesome job of pushing this through and also the Economic Development, they were in on it, and our partners Henningsen Foods and Butler County Landfill. Thank You."

Council member Kroesing introduced Ordinance No. 1118 amending Zoning Ordinance No. 1060, Article 2, Definitions, Section 2.02.171 DWELLING, SINGLE FAMILY, Letter E, by adding "and all accessory buildings over 80 square feet" and deleting "or a ribbed metal material approved by the zoning administrator". Council member Scribner made a motion to pass Ordinance No. 1118 on the first reading only. Council member Yindrick seconded the motion. Voting AYE: Council members Hein, Rogers, Yindrick, Kroesing, and Scribner. Voting NAY: None. Council member Smith was absent. The motion carried and Ordinance No. 1118 was passed on first reading only as follows:

ORDINANCE NO. 1118

AN ORDINANCE AMENDING ZONING ORDINANCE NO. 1060 BY AMENDING ARTICLE 2, DEFINITIONS; SECTION 2.02.171 DWELLING, SINGLE FAMILY; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. The Planning Commission met on October 24, 2009, and recommended that Article 2, Definitions, Section 2.02.171 DWELLING, SINGLE FAMILY, Letter E, be amended by adding "and all accessory buildings over 80 square feet" and deleting "or a ribbed metal material approved by the zoning administrator".

Section 2. That Section 2.02.171 DWELLING, SINGLE FAMILY, of the Zoning Ordinance No. 1060 be amended to read as follows:

2.02.171 DWELLING, SINGLE FAMILY a building having accommodations for or occupied exclusively by one family which meet all the following standards;

- A. The home shall have no less than 900 square feet of floor area, above grade, for single story construction.
- B. The home shall have no less than an 18 foot exterior width;
- C. The roof shall be pitched with a minimum vertical rise of two and one-half inches for each 12 inches of horizontal run;
- D. The exterior material shall be of a color, material and scale comparable with those existing in residential site-built, single family construction;

- E. The home and all accessory buildings over 80 square feet shall have a non-reflective roof material that is or simulates asphalt or wood shingles, tile, slate, or rock;
- F. The home shall be placed on a continuous permanent foundation and have wheels, axles, transporting lights, and removable towing apparatus removed;
- G. The home shall meet and maintain the same standards that are uniformly applied to all single-family dwellings in the zoning district; and
- H. Permanent foundation: continuous perimeter base on which building rests to be constructed from either poured concrete or laid masonry block or brick on a footing to be placed a minimum of 42 inches below the final ground level.

Section 3. 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 4. 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 _____ day of November, 2009

Passed on 1st reading only
Mayor Dana Trowbridge

Passed on 1st reading only
City Clerk Joan E. Kovar

Council member Kroesing made a motion to refer Agenda Items #9, #10, and #11 back to Committee. Council member Rogers seconded the motion. Those agenda items being: #9 - Consideration of Ordinance No. 1119 amending Chapter 9 of the City of David City, Nebraska, Municipal Code Book to include provisions of the International Property Maintenance Code; #10 - Consideration of Ordinance No. 1120 amending Chapter 1, Article 2 of the City of David City, Nebraska, Municipal Code Book providing for a special building inspector; and #11 - Consideration of Ordinance No. 1121 amending Chapter 4, Article 4, of the City of David City, Nebraska, Municipal Code Book, providing for any building and structure and other physical things and conditions that are in conflict with or in violation of any provisions of the Property Maintenance Code to be a nuisance, and the City Council of David City to be an enforcement body regarding nuisance abatement. Voting AYE: Council members Scribner, Yindrick, Hein, Rogers, and Kroesing. Voting NAY: None. Council member Smith was absent. The motion carried.

ORDINANCE NO. 1119

AN ORDINANCE AMENDING CHAPTER 9 OF THE CITY OF DAVID CITY, NEBRASKA, MUNICIPAL CODE BOOK TO INCLUDE PROVISIONS OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

SECTION 1. Chapter 9 of the David City Municipal Code Book shall be amended to read:

Chapter 9

ZONING REGULATIONS

Article 1. Zoning Administrator

§9-101 **ZONING ADMINISTRATOR; POWER AND AUTHORITY.** The Zoning Administrator will work closely with and report to the City Council and the City Administrator. He/she will receive and review applications for zoning permits; interpret and enforce the General Plan and Zoning Ordinances; approve or deny zoning permit applications in compliance with ordinances and the General Plan; issue zoning permits and certificates of zoning inspections. Conduct inspections of property in conjunction with zoning permit applications and for compliance with ordinances and the General Plan. Conduct inspections of property resulting from complaints. Conduct follow up inspections of property for compliance, during the building process and upon completion, prior to issuance of a certificate of zoning compliance. Maintain records, subject to public inspection, of all zoning permit applications, complaints, investigations, inspections and any related activities. He/she will attend all Planning Commission and Board of Zoning Adjustment Meetings, and be required to attend city council meetings as directed by the council. The Zoning Administrator will submit a monthly city department report to the city council listing permits issued or denied, applications to the Planning Commission or Board of Adjustment and related activities.

Article 2. Zoning / Moving Permits

§9-201 **ZONING / MOVING PERMITS; LIMITATION.** If the work described in any Zoning / Moving Permit has not begun within six (6) months from the date of issuance thereof, said permit shall expire; it shall be cancelled by the Zoning Administrator; and written notice thereof shall be given to the persons affected.

If the work described in any Zoning / Moving Permit has not been substantially completed within two (2) years of the issuance thereof, said Permit shall expire and be cancelled by the Zoning Administrator, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled Permit shall not proceed unless, and until, a new Zoning Permit has been obtained.

§9-202 **ZONING PERMITS.** Any person desiring to commence or proceed to erect, construct, repair, enlarge, demolish, or relocate any building or dwelling, or cause the same to be done, shall file with the Municipal Clerk an application for a zoning / building permit. The application shall be in writing on a form to be furnished by the Municipal Clerk for that purpose. Every such application shall set forth the legal description of the land upon which the construction or relocation is to take place, the current zoning, the nature of the use or occupancy, the principal dimensions, the estimated cost, the names of the owner, architect, and contractor, and such other information as may be requested thereon. Payment of the permit fee set by resolution of the Governing Body is due at the time the application is filed. The application, plans, and specifications so filed with the Municipal Clerk shall be checked and examined by the Zoning Administrator. If the application, plans, and specifications are found to be in conformity with the requirements of this Chapter and all other ordinances applicable thereto, the Zoning Administrator shall authorize the Municipal Clerk to issue the said applicant a permit. Whenever there is a discrepancy between permit application procedures contained herein and those contained in any building code adopted by reference, the provisions contained herein shall govern. (*Ref. 17-130 thru 17-132, 17-550, 17-1001 RS Neb.*)

§9-203 **BUILDING MOVING; REGULATIONS.** It shall be unlawful for any person, firm, or corporation to move any building or structure within the Municipality without a written permit to do so. Application may be made to the Municipal Clerk, and shall include the present and future location of the building to be moved, the proposed route, the equipment to be used, and such other information as the Governing Body may require. The application shall be accompanied by a certificate issued by the County Treasurer to the effect that all the provisions regulating the moving of buildings have been complied with on the part of the owner of the real estate upon which the said building is presently located. The Municipal Clerk shall refer the said application to the Municipal Police for approval of the proposed route over which the building is to be moved. Upon approval of each municipal department head listed on the building moving permit, and upon approval of the Zoning Administrator, the Municipal Clerk shall then issue the said permit; provided, that a good and sufficient corporate surety bond, check, or cash in the amount set by motion of the Governing Body and conditioned upon moving said building without doing damage to any

private or Municipal property is filed with the Municipal Clerk prior to the granting of any permit. All buildings wider than ten feet (10'), or longer than twenty feet (20'), or, when in a position to move, higher than fifteen feet (15'), or of any other size which shall require displacement of any City property, shall require a building moving permit and a building moving fee in the amount set by motion of the Governing Body. All other buildings or structures shall require only a building moving permit. In the event it will be necessary for any licensed building mover to interfere with the telephone or telegraph poles and wires, or a gas line, the company or companies owning, using, or operating the said poles, wires or line shall upon proper notice of at least twenty-four (24) hours, be present and assist by disconnecting the said poles, wires, or line relative to the building moving operation. All expense of the said disconnection, removal, or related work shall be paid in advance by the licensee unless such disconnection or work is furnished on different terms as provided in the said company=s franchise. Whenever the moving of any building necessitates interference with a water main, sewer main, pipes, or wire belonging to the Municipality, notice in writing of the time and route of the said building moving operation shall be given to the various Municipal officials in charge of the Municipal utility departments who shall proceed in behalf of the Municipality and at the expense of the mover to make such disconnections and do such work as necessary. (Ref. 60-6,288 to 60-6,294, 60-6,296)

§9-204 **BUILDING MOVING; DEPOSIT.** At such time as the building moving has been completed, each municipal department head listed on the building moving permit shall inspect the premises and report to the Municipal Clerk as to the extent of damages, if any, resulting from the said relocation and whether any Municipal laws have been violated during the said operation. Upon a satisfactory report from each municipal department head listed on the building moving permit, the Municipal Clerk shall return the corporate surety bond, cash, or check deposited by the applicant. In the event the basement, foundation, or portion thereof is not properly filled, covered, or in a clean and sanitary condition, the Governing Body may apply the money deposited for the purpose of defraying the expense of correcting the said conditions. If the expense of correcting the hazardous condition is greater than the amount of the deposit set by motion of the Governing Body, as required herein, the Governing Body may recover such excess expense by civil suit or otherwise as prescribed by law.

Article 3. Building Code

§9-301 **BUILDING CODE; ADOPTED BY REFERENCE.** To provide certain minimum standards, provisions, and requirements for safe and stable design, methods of construction, and uses of materials in buildings hereafter erected, constructed, enlarged, altered, repaired, relocated, and converted, the Uniform Building Code the most recent edition, recommended by the International Conference of Building Officials, and printed in book or pamphlet form is hereby incorporated by reference in addition to all amended editions as though printed in full herein insofar as said code does not conflict with the Statutes of the State of Nebraska.

One (1) copy of the Building Code is on file at the office of the Municipal Clerk and is available for public inspection at the city office during their regular business hours.

The provisions of the Building Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. (Ref. 17-1001, 18-132, 19-902, 19-922 RS Neb.)

Article 4. Plumbing Code

§9-401 **PLUMBING CODE; ADOPTED BY REFERENCE.** To provide certain minimum standards, provisions, and requirements for safe and stable installation, methods of connection, and uses of materials in the installation of plumbing and heating shall be as found in the Uniform Plumbing Code, the most recent edition, published by the International Association of Plumbing and Mechanical Officials in book or pamphlet form, is hereby incorporated by reference in addition to all amended editions as though printed in full herein insofar as said code does not conflict with the Statutes of the State of Nebraska.

One (1) copy of the Plumbing Code is on file at the office of the Municipal Clerk and is available for public inspection at the city office during their regular business hours.

The provisions of the Plumbing Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. (Ref. 17-1001, 18-132, 19-902, 19-922 RS Neb.)

Article 5. Electrical Code

§9-501 **ELECTRICAL CODE; ADOPTED BY REFERENCE.** To provide certain minimum standards, provisions, and requirements for safe and fire proof installation, methods of connection, and uses of materials in the installation of electrical wiring and appliances shall be as found in the National Electrical Code, the most recent edition, as recommended and published by the National Fire Protection Association, printed in book or pamphlet form, in addition to all amended editions as though printed in full herein insofar as said code does not conflict with the statutes of the State of Nebraska. All prior ordinances in conflict herewith shall be and are hereby repealed.

One (1) copy of the Electrical Code is on file at the office of the Municipal Clerk and is available for public inspection at the city office during their regular business hours.

The provisions of the Electrical Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. (*Ref. 17-1001, 18-132, 19-902, 19-922 RS Neb.*)

Article 6. Lighting and Thermal Efficiency Standards

§9-601 **LIGHTING AND THERMAL EFFICIENCY STANDARDS; NEED.**

1. This article shall be known as the Minimum Lighting and Thermal Efficiency Standards for Buildings.
2. The City of David City, Nebraska finds that there is a present and continuing need to provide for the development and implementation of minimum lighting and thermal efficiency standards for buildings to insure coordination with federal policy under the Energy Conservation Standards for New Buildings Act of 1976, to promote the conservation of our dwindling energy resources, and to provide for the public health, safety, and welfare.

§9-602 **TERMS; DEFINED.** As used in this Article, unless the context otherwise requires, the following definitions shall apply:

PRIME CONTRACTOR shall mean the person, persons, entity or entities who has a contract with the owner and is the one responsible for the overall construction of any building or the installation of any component which affects the energy efficiency of the building. Prime Contractor shall also mean a property owner who performs the work of a Prime Contractor.

ARCHITECT or ENGINEER shall mean any person registered pursuant to section 81-847, Reissue Revised Statutes of Nebraska, 1943.

BUILDING shall mean any structure which utilizes or will utilize a heating system, cooling system, or domestic hot water system, including new buildings, renovated buildings, and additions, but not including any structure which has a consumption of traditional energy sources for all purposes not exceeding the energy equivalent of one (1) watt per square foot.

RESIDENTIAL BUILDING shall mean a building three (3) stories or less that is used primarily as one (1) or more dwelling units.

RENOVATION shall mean alterations on an existing building which will cost more than fifty (50%) percent of the replacement cost of such building at the time work is commenced or which was not previously heated or cooled, for which a heating or cooling system is now proposed, except that the restoration of historical buildings shall not be included.

ADDITION shall mean any construction added to an existing building which will increase the floor area of that building by five (5%) percent or more.

FLOOR AREA shall mean the total area of a building, expressed in square feet, which is within the exterior face of the shell of the structure which is heated or cooled.

STANDARD shall mean The Model Energy Code, 1983 Edition, of the Council of American Building Officials.

TRADITIONAL ENERGY SOURCES shall mean electricity, petroleum based fuels, uranium, coal, and all nonrenewable forms of energy.

§9-603 STANDARD; APPLICABILITY. The Standard shall apply to all new buildings, or renovations of or additions to any existing buildings, on which construction is initiated on or after the effective date of this Section. (*Amended by Ord. No. 602, 9/14/83*)

§9-604 EXEMPTIONS. The following shall be exempt from this act:

1. Any building which has a peak design rate of energy usage for all purposes of less than one (1) watt, or three and four-tenths (3.4) British Thermal Units per hour, per square foot of floor area.
2. Any building which is neither heated nor cooled.
3. Any building or portion thereof which is owned by the United States of America.
4. Any mobile home as defined by section 71-4603, Reissue Revised Statutes of Nebraska, 1943.
5. Any manufactured housing unit as defined by subsection (1) of section 71-1557, Reissue Revised Statutes of Nebraska, 1943.
6. Any building (i) listed on the National Register of Historic Places, (ii) determined to be eligible for the National Register of Historic Places by the State Historic Preservation Officer, or (iii) designated as an individual landmark or heritage preservation site by a Municipality or located within a designated landmark or heritage preservation district.
7. Any building to be renovated that is located within an area that has been designated blighted by a Municipality.
8. All residential buildings shall be exempt from lighting efficiency standards.

§9-605 FEES. The fees, charges, and expenses for Zoning Permits and Certificates of Zoning Compliance shall be as established by the City Council; such fees, charges, and expenses to be set by Resolution.

The schedule of fees shall be posted in the office of the City Clerk and may be altered or amended only by the City Council. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

§9-606 WHEN ARCHITECT OR ENGINEER IS RETAINED. If an architect or engineer is retained, the architect or engineer shall place his or her state registration seal on all construction drawings which shall indicate that the design meets the standard. The Prime Contractor shall build or cause to be built in accordance with the construction documents prepared by the architect or engineer.

§9-607 VIOLATION; PENALTY; ENFORCEMENT. Any person violating any provision of this Article shall be subject to a maximum fine of five hundred (\$500.00) dollars. In addition, the City of David City may by an action in the District Court enforce the provisions of this Article through equity and injunctive processes.

§9-608 VALIDITY. If any Section in this Article or any part of any Section shall be declared invalid or unconstitutional such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Article 7. Property Maintenance Code

§9-701 PROPERTY MAINTENANCE CODE; ADOPTED BY REFERENCE. To provide certain minimum standards, provisions, and requirements for the control of buildings and structures and other physical things and conditions essential to ensure that structures are safe, sanitary, and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such structures. The International Property Maintenance Code, the most recent editions recommended by International Code Council, Inc. and printed in book or pamphlet form, is hereby incorporated by reference in addition to all amended editions as though printed in full herein insofar as said code does not conflict with the Statutes of the State of Nebraska.

One (1) copy of the Property Maintenance Code is on file at the office of the Municipal Clerk and is available for public inspection at the city office during their regular business hours.

The provisions of the Property Maintenance Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. (*Ref. 17-1001, 18-132, 19-902, 19-922 RS Neb.*)

- §9-702 HISTORIC BUILDINGS.** The provisions of this code shall not be mandatory for existing buildings or structures designated by the state or city as historic buildings or structures when such buildings or structures are judged by a code official to be safe and not dangerous to the public health, safety and welfare.
- §9-703 DECLARATION OF NUISANCE.** It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of the Property Maintenance Code and such conflict with or violation of the provisions of the Property Maintenance Code is hereby declared to be a nuisance.
- §9-704 ABATEMENT OF NUISANCE.** The imposition of the penalties prescribed in the Property Maintenance Code shall not preclude the city from instituting appropriate actions to abate such conflict with or violation of the provisions of the Property Maintenance Code as prescribed in §4-402,

Article 8. Penal Provision

- §9-801 VIOLATION; PENALTY.** Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

SECTION 2. 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 . day of November, 2009.

Referred back to Committee
Mayor Dana Trowbridge

Referred back to Committee
City Clerk Joan E. Kovar

ORDINANCE NO. 1120

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 2, OF THE CITY OF DAVID CITY, NEBRASKA, MUNICIPAL CODE BOOK PROVIDING FOR A SPECIAL BUILDING INSPECTOR; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

SECTION 1. Chapter 1, Article 2, of the David City Municipal Code Book shall be amended to read:

Article 2. Appointed Officials

§1-201 APPOINTED OFFICIALS; GENERAL AUTHORITY.

- (A) The Mayor, by and with the consent of the City Council, may appoint a City Administrator, City Clerk, Deputy City Clerk, City Treasurer, City Attorney, City Physician, City Police Chief, City Fire Chief, City Street Commissioner, City Electric Supervisor, City Electric Plant Supervisor, City Water/Sewer Supervisor, City Zoning Administrator, City Engineer, City Park and Auditorium Superintendent, and a Special Building Inspector, who shall hold their offices for one (1) year. The Mayor, with the consent of the City Council, shall appoint such number of regular police officers as may be necessary. The City Council may establish and provide for the appointment of members of a law enforcement reserve force as provided by law. (*Neb. RS 17-107*)
- (B) All police officers and other appointed officials may be removed at any time by the Mayor. A police officer and all other appointed officials, including the chief of police, may appeal such removal or other

disciplinary action to the city council. After a hearing, the city council may uphold, reverse, or modify the removal or disciplinary action. (*Neb. RS 17-107*)

§1-202 **APPOINTED OFFICIALS; CITY ADMINISTRATOR ESTABLISHED.** The office of Administrator of the City of David City, Nebraska is hereby established as provided by law. Such officer shall be appointed by the Mayor with the approval of a majority of the City Council and may be removed at any time by the Mayor with the approval of a majority of the City Council. The salary of the Administrator shall be fixed by resolution and shall be payable monthly.

§1-202.01 **APPOINTED OFFICIALS: CITY ADMINISTRATOR; DUTIES AND RESPONSIBILITIES**

The City Administrator shall be appointed by the Mayor, with the approval of a majority of the City Council.

The Administrator directs and supervises all departments of City government, and is responsible for the City's compliance with all statutes, codes, ordinances, and policies.

The Administrator works under legislative direction of the City Council and administrative direction of the Mayor. He/she is to be available to citizens and employees during normal business hours.

Administrative duties of the City Administrator include the following:

Attend all meetings of the City Council and report on matters concerning city affairs under his/her supervision and direction. Keep the Council informed regarding operations and problems and recommend solutions.

Direct the preparation of agendas and agenda packets for the Mayor, Council, and other persons requesting such information.

Attend meetings of departments and officials relevant to city affairs, or as directed by the Mayor and Council.

Evaluate all City business and projects and make recommendations to the Mayor and Council for the adoption of measures and ordinances deemed necessary for the good government of the City.

Continuously monitor and evaluate the efficiency and effectiveness of the City's organization structure, staffing patterns, service levels and administrative systems, and work with the Mayor and Council to implement necessary improvements.

Prepare and present periodic reports on the City's operation.

Initiate, prepare and present studies and research reports.

Supervise contracts and bids.

Maintain contact with State and Federal agencies in all matters regarding the City, analyze the City's position on State and Federal legislation which may impact the City, and communicate the city's position to appropriate individuals and committees of the State and Federal Government.

Obtain information concerning Federal and State funds available to the City. Identify qualifying need areas and implement necessary procedures to obtain such funds if so directed by the Mayor and Council.

Advise citizens, property owners, contractors, and others on questions relating to City code.

Attend authorized meetings and seminars that provide continuing education in matters relating to City administration.

II.

Financial duties of the City Administrator include the following:

Keep the Mayor and Council fully advised on the financial condition of the City.

Prepare annual estimates of revenues and expenditures and submit a proposed budget of a complete financial plan for the City to the Mayor and Council 30 days prior to the consideration and adoption of the annual budget by the Council.

Supervise authorized budget expenditures.

Present monthly reports to the Council regarding current budget and expenditures.

Evaluate all City revenues and make suggestions and recommendations on rates and prices charged for all City services.

Review all employee benefits and recommend changes as needed.
Prepare insurance specifications for the City and obtain bids.

Assist accountants with questions regarding the yearly audit.

Be responsible for long-range financial planning.

Investigate and report on alternate revenue sources for City projects.

III.

Duties of the City Administrator regarding **Personnel** include the following:

Plan, coordinate, and supervise personnel matters for all departments of the City.

Keep the City Personnel Handbook up-to-date and accurate according to changing laws and regulations.

Recommend to the Mayor and Council the appointment and dismissal of appointed personnel.

In coordination with appropriate department heads, is responsible for the appointment and dismissal of all subordinate employees in departments over which he/she exercises jurisdiction.

Provide for the transfer of workers between departments to meet varying workload emergencies.

Build good employee relations.
Hold periodic staff meetings with all department heads and employees.

Supervise the City's annual written employee evaluation process.

Conduct an annual review of the City's class specifications and compensation plan for all employees and recommend changes as needed.

IV.

Community Development duties of the City Administration include the following:

Oversee and assist in the development of long-range and short-range plans for the City, developing goals, objectives, and priorities. Keep department heads involved and informed concerning these plans.

Provide direction and assistance to citizens, community groups and, community promotional organizations to implement community development goals.

Serve as a liaison with outside agencies and organizations encouraging economic development.

V.

Public relations duties of the City Administrator include the following:

As chief public relations ambassador, the City Administrator is responsible to develop cooperative relationships with citizens, the media, and local business and community groups.

Receive, investigate, and act upon citizen complaints.

VI.

Qualification requirements for the position of City Administrator include the following:

Graduation from a four-year college/university with a bachelor's degree in public or business administration or related field. A Master's degree is desirable, but not required.

Ability to plan, organize, staff, direct, coordinate, and evaluate city programs.

Ability to communicate clearly and concisely.

Ability to perform related duties as assigned by the Mayor and City Council.

§1-203

APPOINTED OFFICIALS; CITY CLERK.

- (A) The City Clerk shall attend the meetings of the City Council and keep a correct journal of the proceedings of that body. He or she shall keep a record of all outstanding bonds against the city and when any bonds are sold, purchased, paid, or canceled, the record shall show the fact. He or she shall make, at the end of the fiscal year, a report of the business of the city transacted through his or her office for the year. That record shall describe particularly the bonds issued and sold during the year, and the terms of the sale with each, and every item, and expense thereof. He or she shall file all official bonds after the same shall have been properly executed, and approved. He or she shall make the proper certificate of passage which shall be attached to original copies of all bond ordinances hereafter enacted by the City Council.
- (B) The City Clerk shall issue and sign all licenses, permits, and occupation tax receipts authorized by law and required by the city ordinances. He or she shall collect all occupation taxes and license money except where some other city officer is specifically charged with that duty. He or she shall keep a register of all licenses granted in the city and the purpose for which they have been issued.
- (C) The City Clerk shall permit no records, public papers, or other documents of the city kept and preserved in his or her office to be taken there from, except by such officers of the city as may be entitled to the use of the same, but only upon their leaving a receipt therefore. He or she shall keep all records of his or her office, including a record of all licenses issued by him or her in a blank book with a proper index. He or she shall include as part of his or her records all petitions under which the City Council shall order public work to be done at the expense of the property fronting thereon, together with references to all resolutions, and ordinances relating to the same. He or she shall endorse the date, and hour of filing upon every paper, or document so filed in his or her office. All such filings made by him or her shall be properly docketed. Included in his or her records shall be all standard codes, amendments thereto, and other documents incorporated by reference, and arranged in triplicate in a manner convenient for reference. He or she shall keep an accurate and complete account of the appropriation of the several funds, draw, sign, and attest all warrants ordered for the payment of money on the particular fund from which the same is payable. At the end of each month, he or she shall then make a report of the amounts appropriated to the various funds and the amount of the warrants drawn thereon. Nothing herein shall be construed to prevent any citizen, official, or other person from examining any public records at all reasonable times.
- (D) (1) The City Clerk shall deliver all warrants, ordinances, and resolutions under his or her charge to the Mayor for his or her signature. He or she shall also deliver to officers, employees, and committees all resolutions and communications which are directed at said officers, employees, or committees. With the seal of the city, he or she shall duly attest the Mayor's signature to all ordinances, deeds, and papers required to be attested to when ordered to do so by City Council.
- (2) Within 30 days after any meeting of the City Council, the City Clerk shall prepare and publish the official proceedings of the City Council in a legal newspaper of general circulation in the city, and which was duly designated as such by the City Council. This publication shall set forth a statement of the proceedings thereof and shall also include the amount of each claim allowed, the

purpose of the claim, and the name of the claimant, except that the aggregate amount of all payroll claims may be included as 1 item. Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to those job titles shall be published. Each charge for this publication shall not exceed the rates provided by the statutes of the state, Neb. RS 23-122. (*Neb. RS 19-1102*)

- (3) The above-mentioned publication shall be charged against the general fund.
- (4) The City Clerk shall then keep a book with a proper index, copies of all notices required to be published or posted by the City Clerk by order of the City Council, or under the ordinances of the city. To each of the file copies of these notices shall be attached the printers affidavit of publication, if the notices are required to be published, or the City Clerk's certificate under seal where the same are required to be posted only. (*Neb. RS 19-1102*)
- (E) The City Clerk shall receive all objections to creation of paving districts, and other street improvements. He or she shall receive the claims of any person against the city, and in the event that the claim is disallowed in part, or in whole, the City Clerk shall notify such claimant, or his or her agent, or attorney, by letter within five (5) days after the disallowance, and the City Clerk shall then prepare transcripts on appeals of any disallowance of a claim in all proper cases.
- (F) The City Clerk may charge a reasonable fee for certified copies of any record in his or her office as set by resolution of the City Council. He or she shall destroy Municipal records under the direction of the State Records Board pursuant to Sections 84-1201 thru 84-1227; provided that the City Council shall not have the authority to destroy the minutes of the City Clerk, the permanent ordinances, and resolution books, or any other records classified as permanent by the State Records Board. (*Neb. RS 17-605*)

§1-203.01 **APPOINTED OFFICIALS; DEPUTY CITY CLERK.** The Deputy City Clerk shall assume the duties of the City Clerk in the City Clerk's absence.

§1-204 **CITY TREASURER.**

- (A) The City Treasurer shall be the custodian of all money belonging to the City. He or she shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. He or she shall give every person paying money into the treasury a receipt therefore, specifying the date of payment and on what account paid. He or she shall also file copies of such receipts with his or her monthly reports, and he or she shall, at the end of every month, and as often as may be required, render an account to the City Council, under oath, showing the state of the treasury at the date of such account and the balance of money in the treasury. He or she shall also accompany such accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with any and all vouchers held by him or her, shall be filed with his or her account in the City Clerk's office. If the treasurer fails to render his or her account within twenty days after the end of the month, or by a later date established by the governing body, the mayor in a city of the second class may use this failure as cause to remove the treasurer from office. The office shall be declared vacant, and the City Council shall fill the vacancy by appointment until the next election for municipal officers. (*Neb. RS 17-606*)
- (B) (1) All warrants upon the City Treasurer shall be paid in the order of their presentation therefore and as otherwise provided in Neb. RS 77-2201 through 77-2215. (*Neb. RS 77-2201*)
- (2) The City Treasurer shall keep a warrant register in the form required by Neb. RS 77-2202.
- (3) The City Treasurer shall make duplicate receipts for all sums which shall be paid into his or her office, which receipts shall show the source from which such funds are derived, and shall, by distinct lines and columns, show the amount received to the credit of each separate fund, and whether the same was paid in cash, in warrants, or otherwise. The Treasurer shall deliver one of the duplicates to the person making the payment and retain the other in his or her office. (*Neb. RS 77-2209*)

- (4) The City Treasurer shall daily, as money is received, foot the several columns of the cash book and of the register, and carry the amounts forward, and at the close of each year, in case the amount of money received by the Treasurer is insufficient to pay the warrants registered, he or she shall close the account for that year in the register and shall carry forward the excess. (*Neb. RS 77-2210*)
- (C) (1) The City Treasurer shall prepare and publish annually within 60 days following the close of the municipal fiscal year a statement of the receipts and expenditures by funds of the City for the preceding fiscal year. (*Neb. RS 19-1101*)
- (2) Publication shall be made in one legal newspaper of general circulation in the City. If no legal newspaper is published in the City, then such publication shall be made in one legal newspaper published or of general circulation within the county in which the City is located. (*Neb. RS 19-1103*)
- (D) The City Treasurer shall keep all money belonging to the City separate and distinct from his or her own money. He or she shall invest and collect all money owned by or owed to the City as directed by the City Council. He or she shall maintain depository evidence that all municipal money is, in the name of the City, in a solvent and going financial institution of a type authorized by state law for deposit of municipal funds. He or she shall cancel all bonds, coupons, warrants, and other evidences of debt against the City, whenever paid by him or her, by writing or stamping on the face thereof, "Paid by the City Treasurer," with the date of payment written or stamped thereon. He or she shall collect all special taxes, allocate special assessments to the several owners, and obtain from the County Treasurer a monthly report as to the collection of delinquent taxes.

§1-205

APPOINTED OFFICIALS; CITY ATTORNEY. The City Attorney is the city's legal advisor, and as such he or she shall commence, prosecute, and defend all suits on behalf of the city. When requested by the City Council, he or she shall attend meetings of the City Council, and shall advise any city officials in all matters of law in which the interests of the city may be involved. He or she shall draft such ordinances, bonds, contracts, and other writings as may be required in the administration of the affairs of the city. He or she shall examine all bonds, contracts, and documents on which the City Council will be required to act, and attach thereto a brief statement in writing to all such instruments, and documents as to whether or not the document is in legal and proper form. He or she shall prepare complaints, attend, and prosecute violations of the city ordinances when directed to do so by the City Council. Without direction, he or she shall appear and prosecute all cases for violation of the city ordinances that have been appealed to and are pending in any higher court. He or she shall also examine, when requested to do so by the City Council, the ordinance records and advise and assist the City Clerk as much as may be necessary to the end that each procedural step will be taken in the passage of each ordinance to ensure that they will be valid, and subsisting local laws in so far as their passage and approval are concerned. The City Council shall have the right to compensate the City Attorney for legal services on such terms as the City Council and The City Attorney may agree, and to employ any additional legal assistance as may be necessary out of the funds of the city. (*Neb. RS 17-610*)

§1-206

APPOINTED OFFICIALS; CITY PHYSICIAN. The City Physician shall be a member of the Board of Health of the city, and perform the duties devolving upon him or her as the medical advisor of the said board. In all injuries where a liability may be asserted against the city, the City Physician shall immediately investigate the said injuries, the extent thereof, and the circumstances. He or she shall then report the results of his investigation with the name of the party injured, and all other persons who may have personal knowledge of the matter. He or she shall make all physical examinations and necessary laboratory tests incident thereto, and issue such health certificates as are required by ordinance. For the purpose of making examinations of the sanitary conditions of the property, and the state of health of the inhabitants therein, he or she shall have the right at all reasonable hours to go upon, and enter all premises, buildings, or other structures in the city. He or she shall perform such other duties as may be required of him by the laws of the State of Nebraska, and the ordinances of the city. When ordered to do so by the City Council he shall disinfect, or fumigate the premises, or persons in or about the premises, when the premises are quarantined, and to call upon indigent sick persons, and perform other professional services at the direction of the City Council. The City Physician shall receive as compensation for his services such sum as the Governing Body may from time to time set. He or she shall receive no compensation for his or her services as a member of the Municipal Board of Health. (*Neb. RS 17-121*)

- §1-207 **APPOINTED OFFICIALS; CITY POLICE CHIEF.** The City Police Chief shall direct the police work of the city and shall be responsible for the maintenance of law and order. He or she shall act as Health Inspector, Quarantine Officer and Secretary to the Board of Health. He or she is a working policeman and shall perform all the duties required of such policemen. He or she shall file the necessary complaints in cases arising out of violations of City Ordinances, and shall make all necessary reports required by the City Ordinances, or the laws of the State of Nebraska. (*Neb. RS 17-107, 17-121*)
- §1-208 **APPOINTED OFFICIALS; CITY POLICE OFFICERS.** The City Police, whether regular, or special shall have the power to arrest all offenders against the laws of the State of Nebraska, or the city, by day or by night, and keep the said offenders in the city jail, or some other place to prevent their escape until trial can be held before the proper official of the State of Nebraska, or the city. They shall have full power, and authority to call on any person whenever necessary to assist them in performing public duties, and failure, neglect, or refusal to render such assistance shall be deemed a misdemeanor punishable upon conviction by a fine. Every city police officer shall be expected to be conversant and knowledgeable with the city and state laws and no law enforcement official shall have any interest in any establishment having a liquor license. City police officers shall have the duty to file such complaints and reports as may be required by the city ordinances, and the laws of the State of Nebraska. Any city police officer who shall willfully fail, neglect, or refuse to make an arrest, or who purposely and willfully fails to make a complaint after an arrest is made shall be deemed guilty of a misdemeanor, and upon conviction shall be fined. It shall be unlawful for the City Council to retain any City Policeman in that position after he or she shall have been duly convicted of the willful violation of any law of the country, the state, or any ordinance of the city, except minor traffic violations. It shall be the duty of every city police officer making a lawful arrest to search all persons in the presence of some other person, whenever possible, and shall carefully keep, and produce to the proper judicial official upon the trial everything found upon the person of such prisoners. All personal effects so taken from prisoners mentioned above shall be restored to them upon their release. Suitable uniforms and badges shall be furnished to the city police by the city. Any member who shall lose or destroy the same shall be required to pay the replacement costs, and in the event that any member shall leave the force, he or she shall immediately deliver his badge to the Police Chief. The City Council may from time to time provide the city police with such uniforms, equipment, and transportation as may be essential in the performance of their official duties. (*Neb. RS 17-118, 17-124*)
- §1-209 **APPOINTED OFFICIALS; CITY FIRE CHIEF.** The City Fire Chief shall be elected by the members of the Fire Department. He or she shall enforce all laws and ordinances covering the prevention of fires; the storage and use of explosives and flammable substances; the installation of fire alarm systems; the maintenance of fire extinguishing equipment; the regulation of fire escapes; and the inspection of all premises requiring adequate fire escapes. He or she shall within two (2) days investigate the cause, origin, and circumstances of fires arising within his or her jurisdiction. He or she shall, on or before the first (1st) day in April and October of each year, cause the secretary to file with the City Clerk, and the Clerk of the District Court a certified copy of the rolls of all members in good standing in their respective companies in order to obtain the exemptions provided by law. He or she shall have the power during the time of a fire, and for a period of thirty-six (36) hours thereafter to arrest any suspected arsonist, or any person for hindering the department's efforts, conducting himself in a noisy and disorderly manner, or who shall refuse to obey any lawful order by the Fire Chief or Assistant Fire Chief. The Fire Chief or his assistant in charge of operations at a fire may command the services of any person present at any fire in extinguishing the same or in the removal, and protection of property. Failure to obey such an order shall be a misdemeanor punishable by a fine. The Fire Chief shall have the right to enter at all reasonable hours into buildings, and upon all premises within his jurisdiction for the purpose of examining the same for fire hazards, and related dangers. (*Neb. RS 17-147, 81-506*)
- §1-210 **APPOINTED OFFICIALS; CITY STREET SUPERINTENDENT.** The City Street Superintendent shall have general charge, direction, and control of all work on the streets, sidewalks, culverts, and bridges of the city, and shall perform such other duties as the council may require. It shall be his or her responsibility to see that gutters and drains therein function properly, and that the same are kept in good repair. He or she shall, at least once a year, make a detailed report to the City Council on the condition of the streets, sidewalks, culverts, alleys, and bridges of the city, and shall direct their attention to such improvements, repairs, extensions, and additions as he may believe are needed to maintain a satisfactory street system in the city along with an estimate of the cost thereof. He shall assume such other duties as the City Council may direct. (*Neb. RS 17-119*)

§1-211 **APPOINTED OFFICIALS; CITY ZONING ADMINISTRATOR.** The City Zoning Administrator shall perform all the duties specified in the Zoning and Sub-division regulations adopted by the Mayor and Council.

§1-212 **APPOINTED OFFICIALS; CITY PARK AND AUDITORIUM SUPERINTENDENT.** The City Park and Auditorium Superintendent shall be responsible for the management, care and use of the municipal auditorium and of the facilities in the park grounds except for the area used for the golf course and except for the swimming pool. He or she shall carry out his duties within the policies and guidelines set forth by the City Council and shall inform the Council of problems with regard to the operations that the city should address. He or she shall see to the renting of the facilities and make weekly reports to the City Treasurer concerning the amounts due and the parties owing the City. All funds collected by him or her shall be turned over to the Treasurer on a weekly basis together with a complete accounting thereof.

§1-213 **APPOINTED OFFICIALS; SPECIAL BUILDING INSPECTOR.** The governing body may employ a special building inspector to conduct specific building inspections in accordance with the Property Maintenance Code. The special building inspector shall make a record of his/her inspections and all other work completed on behalf of the city. All records of the special building inspector shall be public records, which shall belong to the city.

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 day of November, 2009.

Referred back to Committee
Mayor Dana Trowbridge

Referred back to Committee
City Clerk Joan E. Kovar

ORDINANCE NO. 1121

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 4, OF THE OF THE CITY OF DAVID CITY, NEBRASKA, MUNICIPAL CODE BOOK; PROVIDING FOR ANY BUILDING AND STRUCTURE AND OTHER PHYSICAL THINGS AND CONDITIONS THAT ARE IN CONFLICT WITH OR IN VIOLATION OF ANY PROVISIONS OF THE PROPERTY MAINTENANCE CODE TO BE A NUISANCE; PROVIDING FOR THE CITY COUNCIL OF DAVID CITY TO BE AN ENFORCEMENT BODY REGARDING NUISANCE ABATMENT; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

SECTION 1. Chapter 4, Article 4, of the David City Municipal Code Book shall be amended to read:

Article 4. Nuisances

§4-401 **NUISANCE DEFINITION, GENERAL AND SPECIFIC.**

(A) General Definition. A nuisance consists in doing any unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- (1) Injures or endangers the comfort, repose, health, or safety of others;
- (2) Is offensive to the senses;
- (3) Unlawfully interferes with, obstructs, tends to obstruct, or renders dangerous for passage any stream, public park, parkway, square, street,

or highway in the city;

- (4) In any way renders other persons insecure in life or the use of property; or
- (5) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

(B) Specific Definition. The maintaining, using, placing, depositing, leaving, or permitting of any of the following specific acts, omissions, places, conditions, and things are hereby declared to be nuisances:

- (1) Any odorous, putrid, unsound, or unwholesome grain, meat, hides, skins, feathers, vegetable matter, or the whole or any part of any dead animal, fish, or fowl;
- (2) Privies, vaults, cesspools, dumps, pits, or like places which are not securely protected from flies or rats, or which are foul or malodorous;
- (3) Filthy, littered, or trash-covered cellars, house-yards, barnyards, stable-yards, factory-yards, mill yards, vacant areas in rear of stores, granaries, vacant lots, houses, buildings, or premises;
- (4) Animal manure in any quantity which is not securely protected from flies and the elements, or which is kept or handled in violation of any ordinance of the city;
- (5) Liquid household waste, human excreta, garbage, butcher's trimmings and offal, parts of fish, or any waste vegetable or animal matter in any quantity, provided that nothing herein contained shall prevent the temporary retention of waste in receptacles in a manner provided by the health officer of the city, nor the dumping of non-putrefying waste in a place and manner approved by the health officer;
- (6) Tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire metal articles, bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster, and all trash or abandoned material, unless the same be kept in covered bins or galvanized iron receptacles;
- (7) Litter, accumulations of barrels, boxes, crates, packing crates, mattresses, bedding, excelsior, packing hay, straw or other packing material, lumber not neatly piled, scrap iron, tin or other metal not neatly piled, old automobiles or parts thereof, or any other waste materials; litter shall include, but not be limited to, the following:
 - a. Trash, rubbish, refuse, garbage, paper, rags, and ashes;
 - b. Wood, plaster, cement, brick, or stone building rubble;
 - c. Grass, leaves, and worthless vegetation;
 - d. Any machine or machines, vehicle or vehicles, or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk;
- (8) Any unsightly building, billboard, or other structure, or any old, abandoned or partially destroyed building or structure or any building or structure commenced and left unfinished; which said building, billboards or other structures are either a fire hazard, a menace to the public health or safety, or are so unsightly as to depreciate the value of property in the vicinity thereof;

- (9) All places used or maintained as junk yards, or dumping grounds, or for the wrecking and disassembling of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn-out, wrecked or abandoned automobiles, trucks, tractors, or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons;
- (10) Stagnant water permitted or maintained on any lot or piece of ground;
- (11) Stockyards, granaries, mills, pig pens, cattle pens, chicken pens or any other place, building, or enclosure, in which animals or fowls of any kind are confined or on which are stored tankage or any other animal or vegetable matter, or on which any animal or vegetable matter including grain is being processed, when the places in which the animals are confined, or the premises on which the vegetable or animal matter is located are maintained and kept in such a manner that foul and noxious odors are permitted to emanate therefrom;
- (12) Storage, accumulation, keeping, placing, or allowing to remain of trash, garage, scrap and wrecked, worn-out, broken or inoperative, or partially destroyed or disassembled personal or real property of any kind, including any motor vehicles, tractors, trailers, machinery, and equipment;
- (13) The storage, keeping or abandonment of parts, including scrap metals, from machinery, or parts thereof, except in enclosed buildings or garages or where otherwise authorized by the city zoning regulations.
- (14) The permitting of emission of smoke from any source that is polluted. The standards for air pollution established or adopted by the State of Nebraska shall be presumptive evidence as to when the air is deemed to be polluted under this section.
- (15) The obstruction or impeding without legal authority any river or collection of water or to corrupt and render unwholesome or impure any watercourse, stream, or other water within the corporate limits of the city. The standards For water quality established or adopted by the State of Nebraska shall be presumptive evidence as to when the water is deemed to be polluted under this section.
- (16) The abandoning, on public property, of personal property. For purposes of this subsection, "public property" shall mean any public right of way, street, highway, alley, park, or other state, county, or city owned property. For purposes of this subsection, "abandon" shall mean any personal property left on public property for more than 24 hours, except when the leaving of said personal property on said portion of public property, at that location, is legally permitted. For purposes of this subsection, "personal property" shall not include any motor vehicle for which a registration, from the State of Nebraska, is required to operate said motor vehicle on those portions of public property which constitute a street, highway, or alley.
- (17) **Any building and structure and other physical things and conditions that are in conflict with or in violation of any provision of the Property Maintenance Code.**
- (18) All other things specifically designated as nuisances elsewhere in this code.

§ 4-402 NUISANCES; ABATEMENT PROCEDURE.

- (A) Duty. It shall be the duty of every owner, occupant, lessee, trustee and/or mortgagee of real estate in the city to keep such real estate free of public nuisances. All, or any part of said premises found,

as provided herein, to constitute a public nuisance shall be abated by rehabilitation, demolition, or repair pursuant to procedures set forth herein.

- (B) Nonexclusive Procedure. The procedure set forth in this subchapter for abatement of a nuisance is nonexclusive and is in addition to the procedure for abatement of litter.
- (C) Enforcement. When the City Council or Board of Health of the City of David City, Nebraska declares or finds that any premises within the jurisdiction for nuisances contained in Section 4-403 of this Code may be maintained contrary to one or more of the provisions of Section 4-401 of the Code, EXCEPT subsection (16) thereof, the City Administrator of the City shall mail a Notice to the owner, occupant, lessee, mortgagee, and/or trustee of the premises. The Notice shall state the conditions which constitute the public nuisance and shall order the abatement of the nuisance within the time period set forth in the Notice, and shall be substantially in the following form:

NOTICE OF NUISANCE

TO: (Owner, Occupant, Lessee, Mortgagee, Trustee)
Addresses)

- (1) Conditions Which Constitute the Public Nuisance:
(State all applicable conditions from Section 4-401)
- (2) Abatement of the Nuisance Outlined Above SHALL be Completed on or Before: (State day, date, and time)

City Administrator
City of David City, Nebraska

- (D) Form of Proper Service of Notice. Service of said Notice shall be by depositing a copy of said Notice in the United States Postal Service enclosed in a sealed envelope and with postage thereon fully prepaid. Said mail shall be registered or certified and addressed to said owner, occupant, lessee, mortgagee, and/or Trustee at the last known address of said parties as disclosed by the current tax rolls, and if there is no known address, then in care of the property address. Service is complete at the time of such deposit. "Owner" as used herein shall mean any person in possession and also any person having or claiming to have any legal or equitable interest in said premises. The failure of any person to receive such Notice shall not affect the validity of the proceedings hereunder.
- (E) Affect of Failure to Abate. If the nuisance is not abated within the period given in the Notice, the City Administrator of the City may determine to proceed to abate the nuisance pursuant to the provisions of this Code.
- (F) Hearing. If the owner, as defined aforesaid, of the premises upon which the City Administrator of the City has determined that there exists a nuisance, shall, within the time period given to the owner by the City Administrator of the City for the abatement of said nuisance, file a written notice with the City Clerk for a hearing before the City Council concerning such determination, the City Clerk shall fix a date and time to hear the matter. The written Notice shall include the name and address, including mailing address, of the owner. The City Clerk shall then issue a Notice of the hearing date and time by mailing a copy to the petitioner's address no later ten (10) days prior to the date of the hearing.

At the time fixed in the Notice, the City Council, shall hear the testimony of all competent persons desiring to testify respecting the condition constituting the abatement and other matters which may be pertinent. At the conclusion of the hearing, the City Council shall, by resolution, declare its findings. If the City Council so concludes, it may declare the condition existing to be a nuisance and direct the City Administrator to proceed to abate the nuisance pursuant to the provisions of this Code. Such final determination shall be considered a final order of the City. Said Notice shall be substantially in the following form:

NOTICE OF ADOPTION OF RESOLUTION NO. _____

TO: _____

YOU ARE HEREBY NOTIFIED THAT ON _____, 20____, the City of David City, Nebraska, by Resolution No. _____, after notice and hearing as specified in said Resolution, did determine that the following constitute a public nuisance, to-wit:

Upon the following described real estate, to-wit: _____

You are granted ____ days from the date of this Notice to abate said nuisance. Failure to abate said nuisance shall result in said nuisance being abated by the City of David City, Nebraska, and the cost of abatement shall be assessed upon said premises and constitute a lien upon said premises until paid.

Dated: _____

CITY OF DAVID CITY, NEBRASKA

By: _____
City Clerk

- (G) Extension of Time. The City Administrator may grant an extension of time to abate the nuisance if, in the City Administrator's opinion, good cause for an extension exists.
- (H) Abatement by City. If the person fails to abate the nuisance within the time set forth, the City Administrator may order the abatement of the nuisance.
- (I) Record of Expenses. The City Clerk shall keep an itemized account of the expenses involved in abating the nuisance. The City Clerk shall post conspicuously on the property and shall also mail to the owner of the property a statement showing the expenses of the abatement, together with a Notice of the time and place when the statement will be submitted to the City Council for approval and confirmation and at which time the City Council may consider the objections and protests to the cost of the work. Said notice shall be substantially in the following form:

NOTICE OF HEARING ON EXPENSE
OF ABATEMENT OF NUISANCE

TO: _____

Pursuant to Section 4-402(I) of the Municipal Code of the City of David City, Nebraska, you are hereby notified that the following is a statement showing the expense incurred by the City of David City in abating a nuisance upon the following described real estate, to wit:

Said expenses are as follows:

You are further notified that said Statement of Expenses shall be submitted to the City Council for consideration on the ____ day of _____, 20____, at _____ o'clock __M., David City, Nebraska, at which time you may appear to object or protest the expenses incurred in the abatement of said nuisance.

CITY OF DAVID CITY, NEBRASKA

By: _____
City Clerk

- (J) Hearing on Statement of Expenses. At the time fixed for hearing on the statement of expense, the City Council shall consider the statement and protest or objections raised by the persons liable to be assessed for the costs of the abatement. The City Council may revise, correct, or modify the statement as it considers just and thereafter shall confirm the statement by motion or resolution. The decision of the City Council on all protests and objections which may be and shall be final and

conclusive. The procedure governing the hearing shall be provided by Section 4-402(F).

- (K) Expenses as a Special Assessment Against the Property- If the property owner does not pay the expense of abating the nuisance within five (5) days after the City Council confirms the cost of abatement, the costs shall become a special assessment against the real estate upon which the nuisance was abated. The assessment shall continue until it is paid, together with interest applicable per statutes of the State of Nebraska.
- (L) Notice of Special Assessment. The City shall file in the offices of the County Clerk and County Treasurer of Butler County, Nebraska a certificate substantially in the following form:

NOTICE OF SPECIAL ASSESSMENT

Under the authority of the David City Municipal Code, the City did on _____, 20_____, abate a nuisance upon the real estate hereinafter described and then on _____, 20___, did assess _____ the cost of the abatement upon the real estate. The City of David City claims a special assessment on the real estate for the expense of doing the work in the amount of \$_____. This amount is a special assessment against the real estate until it is paid, with interest as set by the applicable statutes of the State of Nebraska, until discharged of record. The real estate referred to above, and upon which the special assessment is claimed is that certain parcel of land situated within the jurisdiction of the City of David City, County of Butler, State of Nebraska and more particularly described as follows:

DATED: _____

CITY OF DAVID CITY, NEBRASKA

By: _____
City Clerk

- (M) Alternatives. Nothing in the foregoing sections shall be deemed to prevent the City Administrator from directing the City Attorney to commence a civil and/or criminal proceeding to abate a public nuisance under applicable civil or penal code provisions as an alternative to the proceedings set forth herein.
- (N) Procedure in Case of Emergency. When the conditions which constitute the nuisance pose an immediate threat to the public peace, health, or safety, the City Administrator may order the nuisance abated immediately.
- (O) Expenses Collected by Civil Action. If the property owner does not pay the expense of abating the nuisance within five (5) days after the City Council confirms the cost of abatement, the City may collect the costs associated with said abatement from the property owner and enforce the collection by civil action of any court of competent jurisdiction. (Ordinance No. 1050 6-13-07)

§4-403 **NUISANCES; JURISDICTION.** The Mayor and Chief of Police of the Municipality are directed to enforce this Municipal Code against all nuisances. The jurisdiction of the Mayor, Chief of Police, and court shall extend to, and the territorial application of this Chapter shall include, all territory adjacent to the limits of the Municipality within two (2) miles thereof and all territory within the corporate limits. (Ref. 18-1720 RS Neb.)

SECTION 2. 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 18th day of November, 2009.

Referred back to Committee
Mayor Dana Trowbridge

Referred back to Committee
City Clerk Joan E. Kovar

A recall petition was filed and Mayor Trowbridge hired an attorney to protect his rights as Mayor. Mayor Trowbridge was billed \$10,232.78 from the Law Offices of Mattson, Ricketts, Davies, Stewart & Calkins, 134 South 13th Street, Suite 1200, Lincoln, Nebraska 68508-1901. .

Mayor Trowbridge stated: "I understand fully that the City cannot pay this claim. I submitted it for a point of emphasis, and the point of emphasis is, you will have more Mayors down the road after me and you will have more city council people after the ones that are around this table, and the message needs to be sent to those that are considering doing this that you are at risk for sizeable amounts of money that the City will not stand behind you because the State has not allowed it. We are not going to have conversations on it because we are not going to pay it; but foolishness like that can cost in excess of \$10,000.00.

City Administrator Joe Johnson reported that on November 13, 2009, the building committee, concerning the construction of a City Municipal Building, consisting of Council members Gary Smith and Bill Yindrick, Police Chief Stephen Sunday, City Clerk Joan Kovar, City Administrator Joe Johnson, Tony Novak, and Don Naiberk convened to discuss submitted proposals from qualified architects/engineering firms for design services and construction documents. The Building Committee completed a scoring document for Gilmore & Associates Inc., Olsson Associates, Prochaska & Associates, and The Schemmer Associates, and found that Schemmer Associates scored the most points. It was the recommendation from the building committee that the City Council approve and appoint Schemmer Associates for the construction of a new municipal building.

Council member Scribner made a motion to approve and appoint Schemmer Associates for the design of a new municipal building and to allow the Mayor and City Administrator to begin the negotiation process with Schemmer Associates for a detailed contract price. Council member Yindrick seconded the motion. Voting AYE: Council members Kroesing, Hein, Rogers, Yindrick, and Scribner. Voting NAY: None. Council member Smith was absent. The motion carried.

Mayor Trowbridge stated that the city sales tax sunsets in October 2010. It has done a number of good things for the community. This community has a lot of needs that will only be met by the continuation of a city sales tax. We have infrastructure that have been in the ground 90 plus years or longer. Mayor Trowbridge stated: "I think when we have a Fire Chief who discusses what might happen if they would hook all of the pumping power that they have to the hydrants downtown in case of a large downtown fire, he'd more than likely would completely collapse that system and start bringing water from the park lake in buckets. So this is something we really need to take a look at; it isn't something that bothers you on a daily basis but it is something that needs to be done. So, we are going to entertain and put together thoughts as to where we go with this potential sales tax extension. I am going to ask for letters of interest, or notes, from people interested in serving on a committee to define the future of that project because that will have to be voted for in the May primary. So we need to get moving on that rather quickly. So in the next couple weeks or so, if you have an interest on serving on that

committee would you please jot it down; tell us what your interest is, give us some background on why you think you would make a good, positive, committee member, and we'll put together a committee and we'll get moving." The letters of interest are to be turned in at the City Office to City Administrator Johnson or City Clerk Kovar.

The Subcommittee meetings were scheduled as follows, due to the holidays:
Governmental Subcommittee meeting at 5:30 p.m. at City Hall on Tuesday, December 1 and the Utility Subcommittee meeting at 5:30 p.m. at City Hall on Wednesday, December 2.

Council member Rogers made a motion to go into executive session to discuss 1) personnel matters and 2) to allow City Attorney Egr to brief the City Council and Mayor on legal ramifications and the ins and outs of Initiative and Referendums. Council member Hein seconded the motion. Voting AYE: Council members Yindrick, Scribner, Rogers, Hein, and Kroesing. Voting NAY: None. Council member Smith was absent. The motion carried.

Mayor Trowbridge stated the Council was going into executive session to discuss 1) personnel matters and 2) to allow City Attorney Egr to brief the City Council and Mayor on legal ramifications and the ins and outs of Initiative and Referendums. The Mayor, Council members, Park/Auditorium Supervisor Bill Buntgen, City Attorney Egr, and City Administrator Joe Johnson went into executive session at 7:45 p.m. Park/Auditorium Supervisor Bill Buntgen left the executive session at approximately 8:50 p.m. Police Chief Sunday joined the executive session at approximately 9:10 p.m. and exited the executive session at approximately 9:20 p.m.

City Attorney Jim Egr stated that a motion and second was not needed to come out of executive session. Therefore, Mayor Trowbridge declared the City Council out of executive session at 9:23 p.m.

Council member Hein made a motion to accept the resignation of Stephen Sunday, Chief of Police, with regret and thanked him for his many years of service to the City of David City. Council member Rogers seconded the motion. Voting AYE: Council members Yindrick, Scribner, Kroesing, Rogers, and Hein. Voting NAY: None. Council member Smith was absent. The motion carried.

There being no further business to come before the Council, Council member Scribner made a motion to adjourn. Council member Yindrick seconded the motion. Voting AYE: Council members Kroesing, Rogers, Hein, Yindrick, and Scribner. Voting NAY: None. Council member Smith was absent. The motion carried and Mayor Trowbridge declared the meeting adjourned at 9:25 p.m.

Mayor Dana Trowbridge

ATTEST:

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES
November 18, 2009

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 November 18, 2009; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Joan E. Kovar, City Clerk