

## CITY COUNCIL PROCEEDINGS

April 8, 2020

The City Council of the City of David City, Nebraska, met in open public session at 7:00 p.m. in the lower level of the David City Auditorium at 699 Kansas Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on April 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 on the City's website. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting. The meeting was held at the City Auditorium due to the COVID-19 pandemic so as to incorporate social distancing strategies. [It is recommended that individuals be kept at least 6 feet apart.]

Present for the meeting were: Mayor Alan Zavodny, Council members Tom Kobus, Dana Trowbridge (Trowbridge joined by videoconference), Pat Meysenburg, Kevin Hotovy, John Vandenberg, and Bruce Meysenburg, City Administrator Clayton Keller, City Attorney James Egr, and Deputy City Clerk Tami Comte.

Also present for the meeting were: Superintendent of Schools Chad Denker, Sheriff Tom Dion, Park/Auditorium Supervisor Bill Buntgen, Interim Water Supervisor Aaron Gustin and Building Inspector Ray Sueper.

The meeting opened with the Pledge of Allegiance.

Mayor Zavodny informed the public of the "Open Meetings Act" and asked those present to silence their cell phones.

The minutes of the March 25<sup>th</sup>, 2020 meeting of the Mayor and City Council were approved upon a motion by Council member Hotovy and seconded by Council member Vandenberg. Voting AYE: Council members Kobus, Pat Meysenburg, Vandenberg, Bruce Meysenburg, Trowbridge, and Hotovy. Voting NAY: None. The motion carried.

Council member Hotovy made a motion to approve Pay Estimate #18 to Eriksen Construction Co., in the amount of \$1,552.00 for the Wastewater Treatment Plant Project. Council member Bruce Meysenburg seconded the motion. Voting AYE: Council members Vandenberg, Pat Meysenburg, Bruce Meysenburg, Hotovy, Kobus, and Trowbridge. Voting NAY: None. The motion carried.

Mayor Zavodny asked for consideration of claims. Council member Trowbridge made a motion to authorize the payment of claims and Council member Vandenberg seconded the motion. Voting AYE: Council members Trowbridge, Bruce Meysenburg, Kobus, Vandenberg, Pat Meysenburg, and Hotovy. Voting NAY: None. The motion carried.

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

Building Inspector Ray Sueper said, "I have sent out several sidewalk notices. One to the folks with the trees that are in the way. (Kozisek's) Sara Zook got a sidewalk notice on her new house. I've sent them out all over town to try to treat everyone evenly in that respect. We're kind of taking a back off approach to nuisance properties around town quite a bit, when

I'm out patrolling, and they are telling me that they are working on cleaning up. I think that they are aware that I'm out and about. I think since they are home and looking for things to do, so that's going a little bit better than expected. Also, according to the Baird Holm lawyers, we now own 715 4<sup>th</sup> Street. So, there's your report from the building inspector."

Mayor Zavodny said, "I just want to give a quick update with our command unit calls with the Four Corners Health Dept. We still don't have a lab confirmed case in Butler County. There are two in York County, one in Seward County, but it's naïve to believe that we don't have it in the community. It is really important to maintain the things that we're doing as far as social distancing even though we don't have a stay-at-home order. That is the best thing to be doing at this time. They are also trying to get PPE's (personal protective equipment) for our hospitals and that continues to be a challenge. So, again, just because we don't have any cases, lab-confirmed yet, it is not the time to let down anyone's guard and be careful out and about in the community. Some communities have done a little more, as far as closing down all of their parks and campgrounds. We have another call on Friday at 4 o'clock and there are a few outstanding tests that we're waiting on the results from and so we'll try to keep everyone posted on what's happening on those calls."

Mayor Zavodny asked if anyone had anything else that they wanted to comment on as far as the committee and officer's reports. Council member Bruce Meysenburg made a motion to accept the Committee and Officers Reports as presented. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Vandenberg, Bruce Meysenburg, Trowbridge, Hotovy, Kobus, and Pat Meysenburg. Voting NAY: None. The motion carried.

Council member Trowbridge made a motion to table consideration of Resolution No. 12-2020 allowing David City Public Schools to install barriers on "E" Street, and pertinent signage, for the protection and safety of the students, and all others, crossing "E" Street between the David City High School and the Elementary School. Council member Vandenberg seconded the motion. Voting AYE: Council members Bruce Meysenburg, Pat Meysenburg, Kobus, Trowbridge, Vandenberg and Hotovy. Voting NAY: None. The motion carried.

Mayor Zavodny stated that the next item on the agenda is the request by David City Public Schools to install a fire hydrant on the southeast corner of 8<sup>th</sup> & D Streets. Mayor Zavodny stated that the City will provide labor and asked Interim Water Supervisor Aaron Gustin if it was correct that the City is going to provide the labor.

Interim Water Supervisor Aaron Gustin said, "I am curious about the itemization because typically on any of our hydrants on the installs we have shut off valves prior to the hydrants. I did not see that valve in the cost estimate and we need that because if the hydrant were faulty and leaking, we'd be able to shut it down. There is a possibility that we have a spare in the tower. You're looking at anywhere from \$900 - \$2,000 depending on the size of that main which I didn't get a chance to check before I came."

City Administrator Clayton Keller said, "If we provide the labor, that covers the cost."

Mayor Zavodny said, "If the school would be amenable to that, we're going to more than make up for that in labor but we should, in everyone's best interest, have that shut off available."

Superintendent Chad Denker said, "The School District is very agreeable to pay all of the materials if the City will install it. We have no problem including the additional valve. That's no problem. We'd really like to make it happen."

Council member Bruce Meysenburg made a motion to have the City install a fire hydrant on the southeast corner of 8<sup>th</sup> & "D" Streets including a shut off valve. Pat Meysenburg seconded the motion. Voting AYE: Council members Bruce Meysenburg, Pat Meysenburg, Kobus, Trowbridge, Vandenberg and Hotovy. Voting NAY: None. The motion carried.

Council member Hotovy introduced Ordinance No. 1342 confirming the sale of property legally described as the south twenty-five feet (S 25') of Lot 1 and the North 50' of Lot 4, Block 2, Miles 4<sup>th</sup> Addition to David City, Nebraska, to Nathan J. Styskal for the purchase price of \$8,500.00 plus closing costs. Mayor Zavodny read Ordinance No. 1342 by title. Council member Hotovy made a motion to suspend the statutory rule that requires an Ordinance to be read on three separate days. Council member Vandenberg seconded the motion. Voting AYE: Council members Hotovy, Vandenberg, Bruce Meysenburg, Kobus, Trowbridge, and Pat Meysenburg. Voting NAY: None. The motion carried.

Council member Hotovy made a motion to pass Ordinance No. 1342 on the 3<sup>rd</sup> and final reading. Council member Vandenberg seconded the motion. Voting AYE: Council members Hotovy, Vandenberg, Trowbridge, Pat Meysenburg, Kobus, and Bruce Meysenburg. Voting NAY: None. The motion carried and Ordinance No. 1342 was passed on 3<sup>rd</sup> and final reading as follows:

#### **ORDINANCE NO. 1342**

AN ORDINANCE TO CONFIRM THE SALE OF PROPERTY LEGALLY DESCRIBED AS THE SOUTH TWENTY-FIVE FEET (S25') OF LOT ONE (1) AND THE NORTH FIFTY FEET (50') OF LOT FOUR (4), BLOCK TWO (2), MILES FOURTH (4<sup>TH</sup>) ADDITION TO DAVID CITY, BUTLER COUNTY, NEBRASKA TO NATHAN J. STYSKAL, A SINGLE PERSON, FOR THE PURCHASE PRICE OF EIGHT THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$8,500.00) PLUS CLOSING COSTS; TO REPEAL ORDINANCES IN CONFLICT HEREWITH; AND TO PROVIDE FOR AN EFFECTIVE DATE THEREOF.

BE IT ORDERED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA.

**SECTION 1:** The appropriate Resolution #11-2020 was passed by the City Council directing sale for the following described real estate, to-wit:

The South Twenty-Five Feet (S25') of Lot One (1) and the North Fifty Feet (N50') of Lot Four (4), Block Two (2), Miles Fourth (4<sup>th</sup>) Addition to David city, Butler County, Nebraska,

hereinafter referenced as "Premises".

**SECTION 2:** The appropriate publication of notice of the proposed sale has been completed.

**SECTION 3:** The appropriate passage of the thirty-day (30) right-of-remonstrance period has passed.

**SECTION 4:** The City Council did accept the bid of NATHAN J. STYSKAL, a single person, for the purchase price of EIGHT THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$8,500.00) PLUS CLOSING COSTS, at the City Council Meeting held February 12, 2020, with appropriate public notice.

**SECTION 5:** Sale of the Premises is hereby confirmed, by the Mayor and City Council, to NATHAN J. STYSKAL, a single person, for the purchase price of EIGHT THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$8,500.00) PLUS CLOSING COSTS.

**SECTION 6:** The terms of the sale are contained in a Purchase Agreement attached hereto, marked Exhibit "A", and incorporated herein by reference as if fully set forth.

**SECTION 7:** That any other Ordinances or parts of Ordinances passed and approved prior to the passage, approval, and publication of this Ordinance and in conflict within provisions are hereby repealed.

**SECTION 8:** This Ordinance stated takes effect and be in full force and effect from and after its passage, approval, and publication as required by law and City Ordinance.

**PASSED AND APPROVED** this 8<sup>th</sup> day of April, 2020.

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Mayor: ALAN ZAVODNY

ATTEST:

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Deputy City Clerk: TAMI L. COMTE

(SEAL)

Mayor Zavodny stated that the next agenda item was an amendment to the Sewer Participation Agreement with Henningsen Foods.

Interim Water Supervisor Aaron Gustin said, "I spoke with Frank Anonia at Henningsen's and he was supposed to be here and that's why we put this on the agenda. There was some wording that was a kick back from their legal team to the agreement that had been passed already. He was supposed to be here to elaborate but according to his management, they didn't want him to be in an area with potentially more than 10 people so that is why he's not here tonight. He does extend his apologies but they were basically just looking over grammar. I don't have the agreement with me. (City Administrator Clayton Keller handed Interim Water Supervisor Aaron Gustin a copy of the agreement that was in the Council's agenda packet.) Does anybody have any questions regarding the changes?"

City Administrator Clayton Keller said, "The blue is what they are putting in and the red is what they are taking out."

Interim Water Supervisor Aaron Gustin said, "Where it says that they currently have two locations, they consolidated last February into just the one location for sampling. We had approved 150,000 gallons per day of hydraulic flow a couple of months ago but their outfall

location is deemed 003 I believe rather than 101 by the DEE. The striking of 2,781 pounds per day loading is now 2,804 and that is per their DEE permit. So, I think it was fine tuning the language and some of the details that were overlooked. I accept responsibility for that. I do apologize.”

City Administrator Clayton Keller said, “It is my understanding that these new numbers and wording that they’re putting in here is what is allowed by their permit with the State. Correct?”

Interim Water Supervisor Aaron Gustin said, “Yes, that’s correct.”

Mayor Alan Zavodny said, “The BOD’s aren’t a significant enough change for us to worry about?”

Interim Water Supervisor Aaron Gustin said, “I’m not concerned. We need to feed the bugs in that new lagoon otherwise it will fail us.”

City Administrator Clayton Keller said, “So, in other words, this helps.”

Mayor Zavodny said, “I just know that there’s some really delicate chemistry that goes on; if we give them too much we’ll kill them...”

Interim Water Supervisor Aaron Gustin said, “I would defer to the experts on this but when she came out to do the training on the SBR’s, it was more than adequate to handle and even then some and she said that it might even benefit us to take tankers of their waste. So, I’m not concerned with the increase in the BOD’s.”

Mayor Zavodny said, “I do feel strongly that we need to get this done. Are there any concerns regarding the changes or the agreement as a whole?”

Council member Hotovy made a motion to approve the amendment to the Sewer Participation Service Agreement with Henningsen Foods. Council member Vandenberg seconded the motion. Voting AYE: Council members Hotovy, Trowbridge, Bruce Meysenburg, Vandenberg, Pat Meysenburg and Kobus. Voting NAY: None. The motion carried and a copy of the agreement follows:

**AMENDMENT  
TO SEWER PARTICIPATION SERVICE AGREEMENT AND PERMIT**

This Amendment, made and entered into this 8th day of April, 2020, between the City of David City, a municipal corporation of the County of Butler and State of Nebraska, hereinafter referred to as City, and Henningsen Foods, Inc. a New York corporation, authorized to do business in the State of Nebraska, hereinafter referred to as Company.

RECITALS:

WHEREAS, the City and the Company entered into a Sewer Participation Service Agreement and Permit on July 23, 2018 (the "Agreement") wherein the City agreed to provide and the Company agreed to purchase sewer services from the City on the terms and conditions stated in the Agreement; and

WHEREAS, the City and Company have agreed to make certain amendments to the Agreement which will be memorialized in this Amendment;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Paragraph 1.a of the Agreement is hereby deleted in its entirety and replaced with the following paragraph:
  - a. Specifically, the City's waste water treatment facility shall receive, and the Company shall have the right to discharge no more than a monthly average of 200,000 gallons per day hydraulic flow (the "Volume Limit") with a monthly average BOD of 2,804 pounds per day, monthly average TSS of 700 pounds per day, and monthly average TKN of 290 pounds per day (collectively, the "Organic Load Limits"). The location where the Company's waste water enters the City sewer is designated as Outfall 003 in the Company's NPP Permit issued by the State of Nebraska.
2. Paragraph 7.d of the Agreement is hereby deleted in its entirety and replaced with the following paragraph:
  - d. Split-sampling shall be conducted at the request of the Company. If requested by the Company, all samples taken by the City shall be immediately divided into two

equal shares, one share for the City and one share for the Company. Each shall then have their shares tested by an EPA-approved independent laboratory, and the results of said testing shall be made available by each party to the other. In the event split-sampling is performed, the sampling costs incurred by the Company for its share shall be the responsibility of the Company.

3. The following sentence is hereby added after the end of Paragraph 10.b of the Agreement:

The Company's share of the capital construction costs have been finally determined to be \$1,520,350. The Company agrees to pay this amount in fixed, equal monthly installments of principal and interest (2%) over the term of this Agreement (25 years). The Company's monthly payment is \$6,487.

4. The introductory sentence of Paragraph 12 of the Agreement is hereby deleted in its entirety and replaced with the following sentence:

In the event the Company's effluent exceeds the Volume Limit or any of the Organic Load Limits consistently for three (3) months, the Company shall pay surcharges to the City for excessive volume and/or strength of effluent based upon the following provisions:

5. This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This Amendment may be executed and delivered by electronic mail transmission, which transmission copy shall be considered an original and shall be binding and enforceable according to its terms.
6. Except as amended herein, the Agreement remains unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties, acting under authority of their respective governing bodies, have caused this Amendment to be duly executed on the day first above written.

**COMPANY:**

**HENNINGSSEN FOODS, INC,**  
a New York corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Attest:**

**CITY:**

**CITY OF DAVID CITY, NEBRASKA,**  
a municipal corporation

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**USDA:**

**UNITED STATES DEPARTMENT OF  
AGRICULTURE, RURAL DEVELOPMENT,**

**APPROVED:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEBRASKA            )  
  )  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by James Harshman, President and CFO of Henningsen Foods, Inc., a New York Corporation authorized to do business in the State of Nebraska.

\_\_\_\_\_  
Notary Public

My Commission expires \_\_\_\_\_

STATE OF NEBRASKA            )  
  )  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Alan Zavodny, Mayor of David City.

\_\_\_\_\_  
Notary Public

My Commission expires \_\_\_\_\_

STATE OF NEBRASKA            )  
  )  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, USDA Rural Development State Director.

\_\_\_\_\_  
Notary Public

My Commission expires \_\_\_\_\_

Council member Pat Meysenburg made a motion to approve the appointment of Keith Byrkit to serve a 4-year term (May, 2020 – May, 2024) on the Hruska Memorial Public Library Board of Trustees. Council member Kobus seconded the motion. Voting AYE: Council members Trowbridge, Pat Meysenburg, Kobus, Vandenberg, Bruce Meysenburg and Hotovy. Voting NAY: None. The motion carried.

Council member Pat Meysenburg made a motion to re-appoint Janis Cameron and Jim Vandenberg each to serve a 3-year term on the Planning Commission. Council member Kobus seconded the motion. Voting AYE: Council members Pat Meysenburg, Kobus, Trowbridge, Bruce Meysenburg, Hotovy and Vandenberg. Voting NAY: None. The motion carried.

Mayor Zavodny stated that the next agenda item was consideration of a quitclaim deed for the property located at 715 4<sup>th</sup> Street from the City of David City to the Community Redevelopment Authority of the City of David City. Mayor Zavodny asked City Attorney James Egr to speak regarding the transfer.

City Attorney Egr said, "The Community Redevelopment Authority in David City is a political subdivision of the City of David City and then it will take title to the property and then we'll be in a position to sell the property or develop the property and do what's necessary from that standpoint. So, that's all part of the procedure. Now the City owns the property after the condemnation then the City will transfer the property to the Redevelopment Authority to do with it what it needs to do. They'll follow the procedure that was developed that brought about the condemnation."

Mayor Zavodny said, "So, what do we need to do tonight?"

City Attorney Egr said, "You need to approve executing the deed to the Redevelopment Authority."

Council member Kobus made a motion to execute the quitclaim deed for the property located at 715 4<sup>th</sup> Street, David City, legally described as Lots 7, 8, 9, and 10, in Block 5, Original Town, David City, Nebraska, from the City of David City to the Community Redevelopment Authority of the City of David City. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Hotovy, Pat Meysenburg, Bruce Meysenburg, Kobus, Trowbridge and Vandenberg. Voting NAY: None. The motion carried and the Quitclaim Deed is attached as follows:

When Recorded Return To:

David C. Levy  
Baird Holm LLP  
1700 Farnam Street, Suite 1500  
Omaha, Nebraska 68102-2068

**(SPACE ABOVE THIS LINE FOR RECORDER'S USE)**

**QUITCLAIM DEED**

**THIS QUITCLAIM DEED**, executed this \_\_\_ day of April, 2020, by THE CITY OF DAVID CITY, NEBRASKA, a Nebraska political subdivision and municipal corporation ("Grantor") to THE COMMUNITY REDEVELOPMENT AUTHORITY OF DAVID CITY, NEBRASKA, a Nebraska political subdivision ("Grantee").

**WITNESSETH**, Grantor, in consideration of One Dollar (\$1.00) and other good and valuable consideration, paid by Grantee to Grantor, the receipt and sufficiency of which Grantor and Grantee hereby acknowledge and accept, hereby quitclaims and conveys to Grantee all of Grantor's right, title, interest, and claim in and to the real estate legally described on Exhibit A hereto.

**IN WITNESS WHEREOF**, Grantor has executed this instrument effective as of the date first set forth above.

**CITY OF DAVID CITY, NEBRASKA,**  
a Nebraska municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEBRASKA

) ss.

COUNTY OF BUTLER

The foregoing instrument was acknowledged before me thisday of April, 2020, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_ on behalf of said municipality.

Notary Public: \_\_\_\_\_

## **EXHIBIT A LEGAL DESCRIPTION**

Lots 7, 8, 9, and 10, in Block 5, Original Town, David City, Butler County, Nebraska.

City Administrator Clayton Keller said, "David Levy, the City's attorney from Baird Holm said that their personal property is not the property of the city. So, he is recommending that we give the Treat's a few months, a deadline to come and get their personal property. He said that we didn't have to do that, but he does recommend it."

Council member Trowbridge said, "I take great exception to that. We have a very good attorney with Baird Holm. David Levy is a good one. But David Levy has not been around this mess for the last eleven years. The City of David City has received no respect from these people. They have not agreed to work with us on any of the recommendations to clean up and take care of that property. I think that anything on it should become the property of the tax payers of David City who helped pay for what we have spent during the last eleven year run on cleaning this mess up. I don't agree with giving them any more time. They've had over a year since we started this action to take their property and leave and they have abandoned it. That was their choice and it seems to be their choice to abandon property in many places. I suggest that we take care of it and sell it."

Mayor Zavodny said, "I've been thinking about this for a while and the logistics trouble me tremendously. You don't want to move all of that stuff and store it at Steager's even though we have that agreement and then have to handle it several times. I really don't want them going onto that property right now, now that the City has custody of it and all kinds of bad things could happen. You know, they could accidentally knock over a candle."

Council member Pat Meysenburg said, "I agree with Skip. I've bought a lot of property and it's always been when you close on it, what is in the property is yours. I've talked to two auctioneers about it and they said that our best bet would be to put it in storage until this virus is over because there's no way that you're going to sell stuff right now."

Mayor Zavodny said, "What we need to do is evaluate if it's worth doing that or we're just going to pay to have it taken to the landfill."

Building Inspector Ray Sueper said, "I can probably shed some light on that. When the Board of Zoning Adjustment made their recommendation to the Treat's, they did haul three significant loads of materials out of there. Just knowing human nature, I would bet that was the most valuable stuff that disappeared. When I did the interior inspection of the residence, fifty percent of the main floor was cleaned up and removed from materials that was stacked to the ceiling. So, a significant amount of what may have been valuable is gone from the property. I don't know what's in the storage units in the driveway, necessarily. Again, my guess is that they got what they wanted out of the first three loads and that's why it's sitting the way that it's sitting."

Mayor Zavodny said, "I'm ok with not dragging this out to give them more time to come and get stuff. What is our requirement legally on those storage units because they probably have a lease on those? Do we need to notify them that they are on our property and they need to come and get them?"

City Attorney Jim Egr said, "It would be my opinion that we need to find out whose storage units those are."

Council member Trowbridge asked if they were titled goods. He asked if the trailers are titled.

City Attorney Egr said, "Most of those are titled. I would think that the person that owns those trailers, if they've been collecting on that, they are probably not anxious to remove those. The minute those trailers cease to be getting a payment on there, they're going to want to pick them up. So, I think the best bet on those trailers is to tell the company that we own this property now and you're given a very short period of time, five days, two days, whatever, to remove them off of the property and then that puts the onus on the trailer owner to removed that leased property from there because the Treat's no longer own that property. We don't have to worry about the stuff that's in those trailers. The stuff that's in the house – that's ours to do with as we see fit which is probably going to end up in the dump anyway. So, from that standpoint, Treat's have had plenty of time to remove the stuff from the house. They know the property has been sold. They know they're going to get money. The money has been collected. They're going to get a check from County Court on the property so we're done. So, the stuff inside the house, the stuff inside the other buildings – that's ours. It's done. If there's anything of value there, we can do anything that we want with it. The trailers were not part of the sale. We notify the owners of the trailers that they have five days to remove them. I think that five days is a sufficient time. You tell them that they remove the trailers from the property or we'll consider them abandoned."

Building Inspector Ray Sueper said, "Do you want to do something with the old truck? Move it to the impound yard?"

City Attorney Egr said, "Yes."

Mayor Zavodny said, "I think this is the discussion that we need to have because part of me says "is it worth going through that stuff and storing it for sale" or are we better off just sending in crews to clean it and get it ready to dispose of it as through bid or auction."

Council member Pat Meysenburg said, "I told Clayton today that I would be willing to go over there with Ray and Clayton and see if the stuff is worth anything. I used to work with an auctioneer."

City Attorney Egr said, "I think that Pat has a very good suggestion. I think any of the auctioneers would probably volunteer their time to go through things and see if there is anything worth saving."

Council member Pat Meysenburg said, "I talked to one the other day and he would be willing to come over and see what's there."

Mayor Zavodny said, "It makes some sense to me to evaluate what's there and the thing that I want to do is to expedite things. Now that we own the property, the best thing for the rate payers of David City and the taxpayers, is to get this thing cleaned out and ready to present to get our expenses back for the appraisal and any other fees that we had and set a basement price and decide how to proceed selling it. That's our job now."

Council member Pat Meysenburg said, "But, I do think that we need to look and see what's in those containers before we call somebody. If they have anything of any value it's probably in those containers."

Mayor Zavodny said, "Do you know how they are sealed? Is it a padlock?"

Building Inspector Ray Sueper said, "I'd imagine that it's a padlock of some sort."

Council member Pat Meysenburg said, "They have bolt cutters for that."

Mayor Zavodny said, "Sheriff, have you heard anything that bothers you up to now?"

Sheriff Dion said, "No."

City Attorney Egr said, "We probably have an obligation as the owners of the property to make sure that there isn't anything illegal in the trailers."

Mayor Zavodny said, "How much time is this going to take? How quickly can we do this and the problem is that we're in a really weird time."

Building Inspector Ray Sueper said, "I'm here Friday morning because of an issue that we had. We can do it Friday morning."

Council member Pat Meysenburg said, "That's fine."

Mayor Zavodny said, "Sheriff, are you willing to accompany Ray and Pat to go assess that property and the personal property there?"

Sheriff Dion said, "Yes."

Mayor Zavodny said, "Why don't we send the three of you to do that then and report back to us and let's get this ball rolling. Is everybody ok with that course of action? Ok. Then Friday morning you go take a look."

Council member Trowbridge said, "As these gentlemen take a look and do a quick inventory to assess whether there's value in those trailers or not, could we check with Bob Kobza to see if he could pick those trailers up and move them to Steager's impound lot that we pay \$2,500 per year for and park them there until we sell the things."

Mayor Zavodny said, "Well, I would suggest one interim step. We should call the trailer owners. I'm a little hesitant to move someone else's property, whomever they belong to because if we move it and damage it then we'd be liable. I don't want us to have any liability. We need to look in them and if there's nothing of value in them, then tell them they have two days to come and get them. Let's get them out of there. Let's get it done."

Mayor Zavodny stated that the next agenda item was discussion concerning the COVID-19 coronavirus and asked if anyone wanted to begin the discussion.

City Administrator Clayton Keller said, "We had a couple of City employees that approached me and said that they were willing to make homemade masks. The CDC changed their recommendation on homemade masks and it says if it would help one way or the other

with limiting the spread of COVID-19. So, these employees approached me and said that they were willing to make one for each employee of the City and so they have done that. As you can see, I'm wearing a homemade mask right now. So, hopefully we'll be having all of the full-time employees wearing these masks for the next month or so as long as our county is under the directed health measure under Governor Ricketts. So, the community members should see city employees wearing these for the next few weeks."

Mayor Zavodny said, "Ok. I have a couple of quick notes. I have been getting Department of Health briefings. Several communities have been having these "Cruise Nights" and they are starting to run into problems with those. I don't want to take something that people like and are doing something to get out of the house. I know people have cabin fever and are going stir crazy but there are problems with them cropping up and I just wanted to share with you what the Department of Health said. The first ones were pretty good. They had families in vehicles and they went up and down the streets. It's evolved into a bunch of classmates decided to get six in a vehicle and cruise and now you're introducing six different households into one vehicle and the risk of community spread. You've got people doing Chinese fire drills and stuff like that. So, you hate to take something away that a lot of people look at as good, and point out the evil side of it but, you need to be aware of both sides of that. That's just something that came up in our calls. One of the things that we're not doing as a community – I think putting the signs up and closing the ball field is a good thing so people aren't tempted. What we haven't done as a City, though, is take a stance on our playground equipment. Some of them have closed their playgrounds. Some cities are disinfecting their playground equipment. We probably need to start thinking about that. The campgrounds were another thing that were discussed quite a bit. It goes the spectrum on that too. Some people think that they should close their campground and others are saying that you probably don't want to take that step because there are a lot of implications there. It's a balancing act. Balancing people and constitutional rights and civil rights versus this health concern that we've got going on. So, there's a lot of debate back and forth on those calls. Finally, the reason that you're going to have the next item to consider is that Lincoln and Omaha closed their salons. In our county that did not happen. You obviously cannot practice the six foot social distancing guidelines and you're rotating a whole lot of people in. We have a lot of elderly in our community. You want to talk about creating a potential for disaster, that's a recipe for it. Now, the problem is, asking businesses to close and mandating it, you run into these legal things. Here's the twist on this – I got contacted by a couple of them saying that "we wish that you would tell us to close", because what is happening is that because of the closures in Lincoln and Omaha, people are trying to rent chair space here, salon space to try to cut peoples hair from those communities. There's also people from those communities trying to set appointments here that have never done business here before. Things that I'll be honest, I hadn't thought about. There's a lot of illegal activity going on as far as people starting to cut hair in their homes, which is against their license. This is allegedly. So, the request was actually made by the local salon owners. At least a couple of them feel like their business has ground to almost zero because people are listening and they're staying home. By not being mandated to close, they are not eligible to apply for some of the financial incentives that are being offered. So, we would actually be doing them a favor by mandating that they do it. I likened this to jumping in to the deep end of the pool the other day when we were talking about this in the cities in the Four Corners Health Department phone call. I think that Seward is looking at doing the same thing. The other cities seemed like they had some interest in what we were doing. That is why this is being brought here. It wasn't that we wanted to do it because we thought we could."

Interim Water Supervisor Aaron Gustin said, "I just want to say something in regards to the Wastewater Treatment Plant. Emmalyn was doing quite a bit of research in regards to that.

It may be a possibility that COVID-19 could survive for up to two weeks in sanitary sewage so if anybody wants to take a look at the project going on out there, I ask that you contact me or if you know of anybody that needs to stop out, for their safety, if they could contact me and I'll escort them through the property."

Mayor Zavodny said, "How big of a problem is that? That people are dying to get in there to look?"

Interim Water Supervisor Aaron Gustin said, "It's not but we do get our random people. Ben, with Eriksen, calls me quite often that we've got somebody coming out there. Luckily, it was Mick checking a meter or something of that nature. But, it's just something to be aware of. I've spoken with the Sheriff and some of his deputies were out there the other day and were using the shooting range. So, it's just one of those things that everybody needs to be aware. The Sheriff's department was made aware that if you're going to come out there to just let me know. That's something to think about where she is diligently weighing the findings of that stuff."

Council member Pat Meysenburg said, "How about the golf course? Yesterday you would have thought that there was a tournament going on down there. We've got all of these kids that aren't in school are going down there golfing and there will be six or eight of them standing around right next to each other. They were told that you can only have one person on a golf cart at a time. They tell them that and it's fine until they get away from the clubhouse and then they are right back to two in a golf cart again."

Council member Bruce Meysenburg said, "I've heard on the radio that there's been some concern that when you reach down in the cup to get your ball..."

Council member Pat Meysenburg said, "They've put styrofoam things in there so that your ball won't drop in there. In Omaha, they've warned people that they'll shut their golf courses down if they don't start following the one person to a cart rule. Grand Island shut theirs down because they were sitting out on the patio drinking."

Mayor Zavodny said, "It's dropped off some, but I will say that early on I was apparently the hub for tattletales. I would collect those and share them with Four Corners and say ok we have this situation, etc. I'm not getting those now so I don't know if people are doing a better job of self-policing or people just aren't making those complaints as much. Sheriff, what are you finding with the gatherings of ten or more and those types of things? What issues?"

Sheriff Tom Dion said, "We're just not finding them. People are out at the golf course, yes, but a group of five was the biggest one that I saw. We're doing random checks in the bars and the restaurants. We have not found any violations what so ever. They are following the rules. My concern is the styrofoam cups and the lids but I don't have any control over that."

Mayor Zavodny said, "I do want to also say that one of the struggles is that a lot of these is the enforcement. This has to be a nightmare for law enforcement. What are the penalties? It hasn't been super clear."

Council member Kevin Hotovy said, "See, that's what is super crazy to me. You're talking about shutting a business down, but I can walk across the street and get a Bloody Mary to go. So, what's right and what's wrong and what's in between. Whose decision is it to make?"

I'm not totally against shutting a business down but I know what it's like to have to pay payroll and expenses and it's a tough decision to make."

Mayor Zavodny said, "I just want to say that just summarized how crazy this is."

Council member Kevin Hotovy said, "We're thinking about shutting down multiple businesses but yet you can go get a Bloody Mary to go. It's crazy! The world is crazy today."

Council member Trowbridge said, "The Governor made that call."

Council member Kevin Hotovy said, "Do you bring slinging mud at the Governor into this conversation? It's a decision that he hasn't made yet."

Mayor Zavodny said, "He did make the decision to give you the opportunity to go get the Bloody Mary at 7 a.m. in the morning. I didn't come to consideration of this lightly. I think that some of the salon owners are concerned for their own health, but also for the fact that their business has slowed way down. Part of their question is can they still sell products. I don't see where that's an issue, but the thing is, they can't apply for the federal money unless we close them down. I agree with you, there's a double-edged sword there. Can they come back to us and say we've attacked their livelihood? I'm worried about that because if it's not a hundred percent – let's say four out of the five of them want to be told to shut down – what about the one that doesn't."

Council member Trowbridge said, "The directed health measure specifically states six foot distancing and it has been discussed in the last week that there are activities of business that cannot be done from six feet away. Hair and beauty are two of them and therefore, they must cease. It's relatively simple if we follow the code. The code is six foot minimums."

Mayor Zavodny said, "The health department is frustrated by that. I agree with your assessment of it but what she's saying is that by him leaving it out of that, it leaves that interpretation. Outside of Lincoln and Omaha, they have been operating. The Milford salon's have shut down voluntarily. I think what he was getting at too, was that probably doesn't qualify them for financial incentives. Does it concern you that we actually go farther and actually mandate them closing? I'm starting to think that maybe we need to talk to all of them before we do this and ask them if they are all on the same page."

City Attorney Egr said, "The problem is that this window is going to close on that SBA loan. Maybe some of the others don't realize that they can get the SBA loan. That would be significant for them. I've talked to two bankers and they said that this thing is drying up fast. It only takes fifteen minutes to get that application in."

Mayor Zavodny said, "Today they did announce that it's likely that it will go on longer than was anticipated, and certainly into May and potentially into the middle of the summer. We need to consider those kinds of things. Let's say that we take this action, can they appeal it, can they ask us to stop it? What happens next if we do pass it?"

City Attorney Egr said, "You've got another meeting in two weeks so you could always repeal it."

Council member Tom Kobus said, "That's the worst place that you could be in – to not be six feet apart."

Mayor Zavodny said, "Forget the six feet apart, think about the fact that you're tracking in appointment after appointment. I don't know how many they do in a day. I'm sure it could be fifteen to twenty."

Council member Hotovy said, "I'm sure that they're much closer in a relative sense. Don't get me wrong, they're within six feet, but appointment after appointment every day – look at C-stores. Where do you stop?"

Mayor Zavodny said, "Here's where I think we're at. There are differing opinions and this comes down to a vote, so, let's move to item seventeen."

Council member Pat Meysenburg introduced Ordinance No. 1343: An Ordinance to adopt directed health measures; to help prevent, limit or slow the spread of the Novel Coronavirus (COVID-19) among the citizens of the City of David City. Mayor Zavodny read Ordinance No. 1343 by title. Council member Trowbridge made a motion to suspend the statutory rule that requires an Ordinance to be read on three separate days. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Pat Meysenburg, Trowbridge, Kobus, Hotovy, Bruce Meysenburg, and Vandenberg. Voting NAY: None. The motion carried.

Council member Pat Meysenburg made a motion to pass Ordinance No. 1343 on the 3<sup>rd</sup> and final reading. Council member Trowbridge seconded the motion. Voting AYE: Council members Kobus, Trowbridge, Pat Meysenburg, Vandenberg, Hotovy, and Bruce Meysenburg. Voting NAY: None. The motion carried and Ordinance No. 1343 was passed on 3<sup>rd</sup> and final reading as follows:

#### **ORDINANCE NO. 1343**

**AN ORDINANCE TO ADOPT DIRECTED HEALTH MEASURES; TO HELP PREVENT, LIMIT, OR SLOW THE SPREAD OF THE NOVEL CORONAVIRUS (COVID-19) AMONG THE CITIZENS OF THE CITY OF DAVID CITY; TO PROVIDE FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; AND, TO PROVIDE FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT.**

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

Section 1. On March 17, 2020, the Mayor of the City of David City and the Chair of the Butler County Board of Commissioners/Supervisors cosigned a Butler County Disaster Declaration related to the Novel Coronavirus (COVID-19) as an infectious disease within the State of Nebraska.

Section 2. Pursuant to Neb. Rev. Stat. 17-112 the Mayor may recommend measures thru ordinance(s) for the improvement of the health and general prosperity of the City.

Section 3. The City Council has authority under Section 1-401 of the David City Municipal Code to adopt ordinance(s) as may be necessary and proper for maintaining the peace, good government, and welfare of the city and its trade, commerce, and manufactories and to enforce all ordinances by inflicting fines or penalties for the breach thereof.

Section 4. The City Council has determined it is in the best interest for the City to adopt the following Directed Health Measures as and finds it necessary in order to effectively prevent, limit, or slow the spread of the Novel Coronavirus (COVID-19) among the citizens of the City of David City.

Section 5. The following Directed Health Measures are hereby ordered for the City of David City on April 10, 2020 at 8:00 a.m. and continuing until May 6, 2020 unless renewed, extended or terminated by subsequent order, and all persons are ordered to comply:

1. Gatherings are hereby prohibited.

Gatherings are defined as any event or convening that brings together more than ten (10) patrons, customers, or other invitees, excluding staff, in a single room or single space at the same time, including but not limited to, a school, daycare facility (including in-home facilities), gymnasium, fitness center, auditorium, stadium, arena, large event conference room, meeting hall, theater, library, or any other confined indoor or confined outdoor space.

Gatherings includes but is not limited to weddings, funerals, parades, fairs, festivals, and concerts; or any event or convening with ten (10) or fewer patrons, customers, or other invitees where a minimum distance of six (6) feet between all individuals cannot be maintained in the venue. This includes, but is not limited to, tattoo parlors, massage parlors, barber shops and beauty/nail salons, except the retail portion of these businesses may continue to operate in the sale of their related hair and beauty products. If a venue is subdivided into multiple spaces separated by either physical walls or sufficient airspace each subdivided area may contain up to ten (10) patrons, customers or other invitees, excluding staff.

2. This Ordinance shall not apply to courts of law, meetings or sessions of the Nebraska Legislature, or operations of any other political subdivision; medical providers or facilities, pharmacies; public utilities, essential federal, state, county, and city operations, continuity of business operations; logistics/distribution centers; congregate living settings; group homes and residential drug and/or mental health treatment facilities; shelters; public transportation; airport travel; necessary shopping at fuel stations, grocery stores, retail stores, or malls; tanning salons; election offices; polling places on an election day; or to dwelling units housing more than ten (10) related people. However, all excepted settings shall, to the extent possible, observe physical distancing practices by providing for the maintaining of at least six (6) feet of separation between individuals and all other applicable local, states, and federal guidelines for disease prevention and disinfection of surfaces.

Failure to comply with this Ordinance will result in legal action for enforcement by civil and/or criminal remedies.

Any person who violates this Ordinance shall be deemed guilty of a violation. The penalty for such violation shall be an amount not to exceed \$500 for any one offense, recoverable with costs, and in default of said payment the offender shall stand committed to the County Jail until such fine and costs are paid. Each period of 24 hours during or on which a violation occurs or continues shall be deemed a separate offense.

In addition to any penalty sought or obtained under this Ordinance or other applicable law, the City may institute injunctive or other appropriate civil proceedings necessary to obtain compliance or to abate any nuisance resulting from violations in this Ordinance.

Section 6. Emergency Declaration; Proclamation; Publication; When Operative. Due to the potential impending danger of COVID-19 and pursuant to Neb. Rev. Stat. 17-613, the Mayor hereby proclaims that this Ordinance requires immediate operation upon posting of this Ordinance in at least three of the most public places in the city. This Ordinance shall be in full force and effective from and after its passage, approval, and publication as provided by law and City Ordinance.

**PASSED AND APPROVED** this 8<sup>th</sup> day of April, 2020.

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MAYOR ALAN ZAVODNY

ATTEST:

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TAMI COMTE, DEPUTY CITY CLERK

(SEAL)

Mayor Zavodny stated that Ordinance No. 1343 will be in effect until the current health order sunsets.

City Administrator Clayton Keller said, "So, with COVID-19 and most City Council's moving to a strictly technological format, via ZOOM or some other web conferencing options, we thought that we would give our Council the option to do the same thing. But to do that, they need the technology to do so. We understand that not everyone has a computer at home so this is an opportunity, at a pretty cheap option, to give every Council member a computer at home. You can receive your agenda packets electronically instead of having to wait for us to give you the paper copies. So, we gave you, in your packets, a few different options. The cheapest one being on top there. We would purchase one for each Council member and the Mayor. Council members can choose whether they want to use it or their own personal computer. We thought that this was an opportune time because this can qualify as a COVID-19 expense and there is a chance that we could get reimbursed for it."

Mayor Zavodny said, "Is there a use for these after this virus passes? I'll tell you this – I wish we could have the whole meeting with no one being here. Being one of those people with underlying conditions, this scares me. I have the capability of doing this at home. I wouldn't need it. Does everybody have internet access at home? That's one thing."

City Administrator Clayton Keller said, "So, if someone doesn't have internet access, the library does offer free WiFi. You could sit in the parking lot and access their WiFi."

Mayor Zavodny said, "I thought about that."

City Administrator Clayton Keller said, "For those that would opt to use their own computer, the reason that we would buy computers for each Council member and the Mayor, is that now you can do public business on a public computer so that you don't put your public business on your personal computer."

Mayor Zavodny said, "I can see that issue."

Deputy Clerk Comte said, "If you use your personal phone for public use, there is a chance that everything on your personal device becomes subject to the public records act."

City Administrator Clayton Keller said, "We wouldn't have to take a half an hour to drive the packets around town. We'd just e-mail them to you."

Council member Trowbridge said, "Clayton, would people be able to use their municipal laptop for private e-mails?"

City Administrator Clayton Keller said, "No. Not at all."

Council member Trowbridge said, "Only for assigned City business."

City Administrator Clayton Keller said, "That's correct."

Mayor Zavodny said, "I hadn't considered that. This turns into the Hillary Clinton e-mail thing."

City Administrator Clayton Keller said, "That's exactly it."

Mayor Zavodny said, "That argument sells me. I wasn't sold going in but I can see that being an issue."

Council member Kobus said, "How much are they?"

City Administrator Clayton Keller said, "The cheapest option that we found is \$129.99."

Council member Kobus said, "For a computer?"

Deputy Clerk Comte said, "It's not very big."

City Administrator Clayton Keller said, "It's a 15.6" and that's corner to corner. It'll do the job just fine."

Mayor Zavodny said, "Let's talk about this. This could go on – they're saying until we have a vaccine. We could be doing business like this for a year to eighteen months. It has the potential. So, you know, you would have one for each Council member and whoever the Mayor is and that stays with the seat. Is the cheap good enough?"

City Administrator Clayton Keller said, "When we were first looking at these a couple of weeks ago, the cheapest option was a computer that was over \$500 each. So, the fact that Tami found this one that was \$130 each was incredible."

Mayor Zavodny said, "So, it has a camera and it would do the ZOOM meetings? I've been hearing that ZOOM has some issues if you don't do it right."

City Administrator Clayton Keller said, "Yes. So, I make sure that's not going to happen before I log us on."

Council member Hotovy made a motion to purchase seven laptop computers for the Council members and the Mayor. Council member Bruce Meysenburg seconded the motion. Voting AYE: Council members Hotovy, Trowbridge, Kobus, Pat Meysenburg, Vandenberg and Bruce Meysenburg. Voting NAY: None. The motion carried.

There being no further business to come before the Council, Council member Hotovy made a motion to adjourn. Council member Vandenberg seconded the motion. Voting AYE: Council members Hotovy, Pat Meysenburg, Trowbridge, Kobus, Bruce Meysenburg, and Vandenberg. Voting NAY: None. The motion carried and Mayor Zavodny declared the meeting adjourned at 8:07 p.m.



CERTIFICATION OF MINUTES  
April 8, 2020

I, Tami Comte, duly qualified and acting Deputy City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of April 8<sup>th</sup>, 2020; 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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Tami Comte, Deputy City Clerk