

December 5, 2013

**ALLIANCE CITY COUNCIL**

REGULAR MEETING, THURSDAY, DECEMBER 5, 2013

STATE OF NEBRASKA            )  
                                          )  
COUNTY OF BOX BUTTE        ) §  
                                          )  
CITY OF ALLIANCE                )

The Alliance City Council met in a Regular Meeting, December 5, 2013 at 7:00 p.m. at Board of Education Meeting Room, 1604 Sweetwater Avenue. A notice of meeting was published in the Alliance Times Herald on November 27, 2013. The notice stated the date, hour and place of the meeting, that the meeting was open to the public, and that an agenda of the meeting, kept continuously current, was available for public inspection at the office of the City Clerk in City Hall; provided the Council could modify the agenda at the meeting if it determined an emergency so required. A similar notice, together with a copy of the agenda, also had been delivered to each of the City Council Members. An agenda, kept continuously current, was available for public inspection at the office of the City Clerk during regular business hours from the publication of the notice to the time of the meeting.

Mayor Feldges opened the December 5, 2013 Regular Meeting of the Alliance, Nebraska City Council at 7:00 p.m. Present were Mayor Feldges, Council Members Benzel, Lewis, Seiler and Yeager. Also present were City Manager Cox, City Attorney Olsen, and City Clerk Jines.

- Mayor Feldges read the Open Meetings Act Announcement.
- The first agenda item was the Consent Calendar. Councilman Benzel made a motion, which was seconded by Councilman Lewis to approve the Consent Calendar as follows:

**CONSENT CALENDAR – DECEMBER 5, 2013**

1. Approval: Minutes of the Regular Meeting, November 21, 2013 and the Joint Meeting, November 20, 2013.
2. Approval: Payroll and Employer Taxes for the period November 9, 2013 through November 22, 2013 inclusive: \$161,612.10 and \$11,719.24 respectively.
3. Approval: Claims against the following funds for the period November 14, 2013 through November 19, 2013: General, General Debt Service, Trust and Agency, Street, Electric, Refuse Collection and Disposal, Sanitary Sewer, Water, Golf Course, Downtown Improvement Districts, R.S.V.P., Keno, and Capital Improvement; \$380,922.25.

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4. Approval: Updating the roster of the Alliance Volunteer Fire Department removing Ryan Rosin.
5. Approval: The issuance of a Cemetery Certificate to Doyle Buskirk for the South One Half of the Northwest Quarter (S1/2 NW1/4) of Lot Sixteen (16), Section Two (2), Block Seventeen (17), Second Addition to the Alliance Cemetery.
6. Approval: Certification of City Street Superintendent for the Nebraska Department of Roads. The City of Alliance had a Class A Licensed Superintendent from January 1, 2013 through August 16, 2013. Following the departure of our former superintendent we contracted with the City of Scottsbluff for RC services on our current street projects.
7. Approval: The issuance of a Tree Surgeon License to Patrick Weber dba The Wood Harvester for the 2014 calendar year.
8. Approval: Resolution No. 13-112 accepting the donation of the Panhandle Men's Club for a replacement aerating fountain for Skyview Golf Course.
9. Approval: Resolution No. 13-113 granting permission for Keep Alliance Beautiful to conduct a fund raiser on behalf of Senior Services, Inc. to assisting in remodeling expenses on City owned property.
10. Approval: Resolution No. 13-114 granting permission for the City of Alliance to enter into a Cooperative Purchasing Agreement with the State of Minnesota.

NOTE: City Manager Cox has reviewed these expenditures and to the best of his knowledge confirms that they are within budgeted appropriations to this point in the fiscal year.

Roll call vote with the following results:

Voting Aye: Benzel, Lewis, Feldges, Seiler, Yeager.

Voting Nay: None.

Motion carried.

- City Manager J.D. Cox gave his City Manager's Report which is shown in outline form:
  1. Senior Services, Inc. – Have requested bylaws and financials
  2. Streetscape Phase 1 Update –
    - A. East Side-
      - Last cement pour was completed
      - Brick Layers making good headway
      - Housekeeping and Cleanup
      - City has 2-3 days of brickwork
      - Finish up after cold front/snow

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- B. West Side-Complete
- 3. Streetscape Phase 2 Update – Schedule is still in works
  - A. Scottsbluff approved Responsible Charge (Perry Mader)
    - CM taking to Council recommendation through Final Design Process
  - B. Several decorative streetlights no longer working
    - Rather than paying to fix and later removing;
    - Scheduled removal of streetlights (Especially non-working)
  - C. Other possible option for construction
- 4. Charter Cable System Agreement Upgrade Request Update – Charter has Responded
- 5. Service Excellence –
  - A. Working on transition to all facilitating in-house
  - B. Nominations for Service Excellence Awards:
    - Troy Shoemaker – SE Super Coach
    - Employee Engagement – City of Alliance
- 6. Trademark –
  - A. Much concern earlier about BTBHIA and our Alliance Logo passing muster
  - B. Two outstanding news items:
    - Alliance Logo – Approved!
    - BTBHIA “word mark”– Tentatively approved with small descriptor change
  - C. Develop “Acceptable Use Policy”
    - Encourage its usage – to help stand up to future/potential challenges
- 7. Upcoming Calendar:
  - December 13 (5:30 pm): Volunteer/Board Banquet @ Knight Museum
  - December 30: Christmas Tree @ Knight Museum
  - January 17: Employee Banquet

- The second reading of Ordinance No. 2747 which will amend the Alliance Municipal Code, restricting the height of weeds, grasses or worthless vegetation to eight inches was the next item for Council’s review. Council was provided with the following background information:

[The State of Nebraska Statute 17-563 previously did not allow cities to establish any nuisance codes with a height of less than twelve inches for weeds, grasses and worthless vegetation. During the 2013 legislative session, the Nebraska Unicameral adopted revisions that now allow Nebraska cities to establish the height as local Councils deem appropriate via an adopted ordinance.

Current City Codes (Sections 20-117 and 20-119) limit growth of weeds, grasses or worthless vegetation to no more than twelve inches as previously stated by the State Statute. The City Code Enforcement Officer has suggested that yards begin looking unkept when the vegetation reaches eight inches in height. Given additional time is required for enforcement action following any citation; it is

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recommended that the height allowed by City Code be reduced from twelve inches to eight inches.]

A motion was made by Councilman Seiler, seconded by Councilman Benzel to approve the second reading of Ordinance No. 2747. City Clerk Jines read the Ordinance by title which follows in its entirety:

ORDINANCE NO. 2747

AN ORDINANCE PERTAINING TO NUISANCES AND THE HEIGHT OF WEEDS, GRASSES OR WORTHLESS VEGETATION AND AMENDING SECTIONS 20-117 – DECLARATION OF NUISANCE AND 20-119 – WEEDS, GRASS OR WORTHLESS VEGETATION; PROVIDING FOR AN EFFECTIVE DATE AND REPEALING EXISTING PROVISIONS OF THE ALLIANCE CODE NOT CONSISTENT WITH THIS ORDINANCE.

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

SECTION 1. Sections 20-117 and 20-119 of the Code of Ordinances of the City of Alliance, Nebraska are hereby amended to read as follows:

“Sec. 20-117. Declaration of nuisance.

It is hereby declared to be a nuisance to permit, allow, or maintain any growth of eight inches or more in height of weeds, grasses, or worthless vegetation, or to litter or to cause litter to be deposited or remain on any property within the city, except in proper receptacles. It is also declared to be a nuisance to permit, allow, or maintain any growth of noxious weeds as such weeds are defined from time to time by the director of agriculture pursuant to the Noxious Weed Control Act (R.R.S. 1943, § 3-945.01 et seq.), or as designated by the county weed board, regardless of height.

Sec. 20-119. Weeds, grass or worthless vegetation.

The owner or occupant of any lot or piece of ground within the city shall keep the lot or piece of ground and the adjoining streets and alleys free of any growth of eight inches or more in height of weeds, grasses, or worthless vegetation. The owner or occupant shall also keep said property free of any growth of noxious weeds as such noxious weeds may be defined from time to time by the director of agriculture pursuant to the Noxious Weed Control Act (R.R.S. 1943, § 3-945.01 et seq.), or as designated by the county weed board, regardless of the height of the noxious weeds.”

SECTION 2. All Ordinances and parts of Ordinances passed and approved prior to passage, approval and publication of this Ordinance in conflict herewith are now repealed.

SECTION 3. This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

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Roll call vote on the second reading of Ordinance No. 2747 with the following results:

Voting Aye: Seiler, Benzel, Lewis, Yeager, Feldges.

Voting Nay: None.

Motion carried.

- The next agenda item was the second reading of Ordinance No. 2743 which will amend the Alliance Municipal Code with regard to fireworks. Council was provided with the following background information:

[The Council discussed the current fireworks code on February 6, 2012 and again September 19, 2013. The attached recommended ordinance is as a result of the discussion at the November 7, 2013 meeting when Council directed Staff to clarify what the term “near” means regarding the discharge of fireworks and exclude streets and parkade from any restrictions.

Issues over the past two years have prompted City Staff to request consideration of the modification of the fireworks code. The Fire Chief provided the following statistics relating to firework-related calls:

- 2011 - 9 fires resulting in \$5,000 in property damage including City restrooms and dumpsters
- 2012 - 11 fires resulting in \$500 in property damage to trees in the City park and 1 citation for discharge after July 4
- 2013 - 5 fires resulting in \$1,000 in property damage including City dumpsters. An August 17 discharge of a Chinese lantern resulted in a tree fire on private property

Following are points that were considered at the September 19<sup>th</sup> Council meeting along with the suggested modifications to the Code:

**Discharge Safety** – There presently are no guidelines in City Code prohibiting unsafe discharge of fireworks and other explosives. Suggested limitation of acts as presently stipulated as unlawful in State Statute.

**City Property** – The City has experienced consistent property damage each firework “season”. There are no limitations regarding discharge of fireworks on City property including City recreational facilities or parks or public streets, highways and sidewalks. Special allowance in Code and/or permits is recommended for approved public fireworks displays. It is recommended that fireworks by the general public be prohibited on City recreational property to lessen property damage. Concerns with obstruction or littering of public streets,

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highways and sidewalks are addressed by other portions of City Code and State Statute.

Restricted Types of Fireworks – Code presently forbids the sale or discharge of a lengthy list of fireworks; however, the Chinese sky lantern, which is not included on the list, has recently gained popularity and has created fire and safety issues for the City. For this reason it is suggested that the sky lanterns and similar fireworks be added as an additional prohibited firework.

Discharge Dates – Discharge of fireworks is allowed in the State of Nebraska Statutes from June 24<sup>th</sup> through July 5<sup>th</sup>, unless otherwise modified by resolution of the Mayor or City Council. The City of Alliance is presently more restrictive allowing discharge of fireworks from June 25<sup>th</sup> through July 5<sup>th</sup>. (Note however, times are not specified in the current code for discharge on July 5<sup>th</sup>.) There is no provision for discharge of fireworks on New Years Eve, which is allowed by State Statute. The Code as presented in the modified form allows discharge from June 25<sup>th</sup> through July 4<sup>th</sup> with provision for the City Manager to authorize discharge on July 5<sup>th</sup> in certain instances.]

A motion was made by Councilman Yeager, seconded by Councilman Benzel to approve the second reading of Ordinance No. 2743. City Clerk Jines read the Ordinance by title which follows in its entirety:

ORDINANCE NO. 2743

AN ORDINANCE OF THE CITY OF ALLIANCE, BOX BUTTE COUNTY, NEBRASKA, AMENDING SECTION 22-175 OF CHAPTER 22, ARTICLE VII; PROHIBITED; NONAPPLICABILITY; AMENDING SECTION 22-177; LEGAL DATES, TIMES, AND AGE RESTRICTIONS FOR DISCHARGING FIREWORKS; PERMIT REQUIRED; AND ADOPTING SECTION 22-178; DISCHARGE OR RELEASE OF SKY LANTERN OR FIRE BALLOON; AND TO REPEAL ANY OTHER CONFLICTING SECTIONS AND ORDINANCES; TO PROVIDE FOR AN EFFECTIVE DATE AND TO PROVIDE FOR PUBLICATION OR POSTING AS REQUIRED BY LAW.

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

SECTION 1: Section 22-175 shall state:

(a) It shall be unlawful for any person to manufacture, display, sell, offer for sale, give away, use, start, discharge or explode, or cause to be manufactured, displayed, sold, offered for sale, given away, used, started, discharged, or exploded, any Firework.

(b) The provisions of the immediately preceding subsection shall not apply to:

(1) Non-wire Sparklers, toy pistols or toy pistol caps;

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- (2) The possession of pyrotechnics which are in transportation to points outside the city;
- (3) The possession or transportation of such pyrotechnics held by wholesale dealers for sale and shipment in unbroken packages to points or places outside the city;
- (4) The sale, storage, or use of railroad track torpedoes or other signaling devices used by railroads;
- (5) The sale, storage or use of flashlight compositions by photographers or dealers in photographic supplies;
- (6) Pyrotechnic displays on the occasion of public celebrations or festivals, if the person conducting such pyrotechnic display shall first have applied for and have been granted by resolution of the mayor and city council permission to conduct such display;
- (7) The sale and use of Fireworks between June 24 and July 4 each year, during time periods authorized by state statute as modified by resolution of the mayor and city council, or by another section of this Article;
- (8) The use of blank cartridge pistols at sporting events by authorized persons; or
- (9) The use of blank cartridge pistols or other pyrotechnics by a person designated by the city manager or designee to implement the waterfowl management policy.

(c) The terms Firework or Fireworks in this Article shall refer to “Consumer Fireworks” as they are defined and amended by Chapter 28, Article 12 of the state statutes.

SECTION 2: Section 22-177 shall state:

(a) It shall be unlawful to discharge any Firework as defined and permitted by state statute, prior to June 25, and after July 4 and at any time other than the dates and times specifically authorized by state statute and as modified by resolution of the mayor and city council.

(b) Fireworks may be legally discharged between the hours of 9:00 a.m. and 10:00 p.m. on June 25 to July 2; and between the hours of 9:00 a.m. and 12:00 midnight on July 3 and July 4. The City Manager or his or designee may authorize in writing the discharge of Fireworks between 9:00 a.m. and 12:00 midnight on July 5 if, in the discretion of the City Manager or his or her designee, sufficient circumstances warrant an extension of the holiday celebration, provided that no Firework may be discharged on July 5 without the written authorization of the City Manager or his or her designee.

(c) The use or possession of Fireworks by any person under 12 years of age is prohibited unless direct supervision is provided by a person 18 years of age or older.

(d) The city manager or designee shall issue a permit allowing the sale of Fireworks during permitted periods for that calendar year under the following standards:

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- (1) Proof of Fireworks license from the state fire marshal under state administrative code title 157, chapters 2 and 4, permissible Fireworks list and licensing requirements, as per the current International Fire Code, Fireworks as adopted by the City;
- (2) Sale and retail display with storage in type 5 magazine 3301.1.3, 3301.2.3, 3302 and 3308.11.

(e) At no time shall it be lawful to discharge a Firework in any manner that is unsafe or dangerous to persons or property, including but not limited to the discharge of a Firework from or into a moving vehicle or other mechanism of transportation, at or near a person or group of persons, into or upon any residence, premises, building, or construction, or in any other manner prohibited by Nebraska Revised Statute § 28-1242 as now constructed or hereafter amended.

(f) At no time shall it be lawful to discharge a Firework into or upon any City property unless the City has granted a special permit for such discharge.

SECTION 3: Section 22-178 shall state:

(a) Nothing in this Article shall allow the discharge or release, at any time, of a sky lantern, fire balloon, or other device constructed of collapsible paper and designed to rise slowly into the sky by the use of a slow-burning interior flame, similar to the design of a hot-air balloon.

(b) Sky lantern or fire balloon shall also refer to any device with a flame that continuously burns for over one minute and is designed to reach an elevation of at least 50 feet from the ground.

SECTION 4: Any ordinance or any part thereof in conflict with this ordinance is hereby repealed to the extent of such conflict.

SECTION 5: This ordinance shall be in full force and effect after its passage, approval, and publication according to law.

SECTION 6: If any portion or provision of this ordinance shall for any reason be held invalid or unenforceable, the invalidity or unenforceability of such portion or provision shall not affect any of the remaining provisions of this ordinance, the intention being that the same be severable.

A motion was made by Councilman Lewis to waive the statutory requirement of reading the ordinance on three different dates. Motion was seconded by Councilman Benzel.

Roll call vote to waive the statutory rule requiring Ordinance No. 2746 be read on three separate dates.

Voting Aye: Benzel, Lewis, Feldges.

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Voting Nay: Yeager, Seiler.

Motion failed.

Roll call vote on the second reading of Ordinance No. 2743 with the following results:

Voting Aye: Lewis, Feldges, Benzel, Seiler, Yeager.

Voting Nay: None.

Motion carried.

- The third reading of Ordinance No. 2744 was the next agenda item. Ordinance No. 2744 will approve the rezoning request of Sturdevant's Auto to rezone property described as Lots 5-9, Block 15, Original Town to the City of Alliance. Council was provided with the following background information:

[Sturdevant's Alliance, Inc. is requesting to rezone property from C-2 (Central Business District) to C-3 (Highway Commercial District.) The property is described as Lots 5-9, Block 15, Original Town to the City of Alliance, commonly addressed as 114 East Third Street.

The applicant desires to build a new retail structure on the recently cleared lot. The desired site layout is not permitted by the current zoning of C-2. Properties immediately on all sides of Sturdevant's lots are zoned C-2; however, some properties located further east are zoned C-3.

If the property remains zoned as C-2, the proposed project does not meet the zoning requirements as C-2 zoning requires the front of the building to have a zero (0) foot setback, meaning that it would not allow for off-street parking stalls in front of the building. In other words, the building front façade would be required to be adjacent to the sidewalk similar to the placement of the former building on the site prior to September, 2013. With re-zoning to C-3, this building would be required to have a 15-foot setback on the front of the lot which would allow for off-street parking on the south (street) side where it is proposed for the new building design.

Findings of Fact as compiled by City Staff could include:

- Approval of re-zoning would then create "spot" zoning for that property. The property to the east of Sturdevant's would benefit from being re-zoned as well to eliminate the creation of spot zoning within the City blocks and create more leniency in respect to future improvements to said property.
- There would be no negative implications to re-zoning both properties on the Southwest side of Block 15.

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- The Sturdevant's property is adjacent to the alley that runs north & south one-way. Across from the alley is the "mini-park" located at the corner of 3<sup>rd</sup> Street & Box Butte Avenue. This provides a visual and distinct landmark separation from other buildings classified with the C-2 zoning (Central Business District).

Fire Chief Troy Shoemaker clarified that parking on the south side of the building would be allowed by the Nebraska Department of Roads as the parking would be off-street, on-property, with access by a driveway off Third Street and exit through the alley drive.

Notification petitions were sent to property owners within a 300' radius of the subject property. Thirty five letters were sent with the City receiving twelve back. Eleven were in favor of the rezone and one was disinterested.

The Planning Commission unanimously approved the rezoning request at their October 8, 2013 meeting.]

A motion was made by Councilman Lewis, seconded by Councilman Benzel to approve the third reading of Ordinance No. 2744. City Clerk Jines read the Ordinance by title which follows in its entirety:

#### ORDINANCE NO. 2744

AN ORDINANCE OF THE CITY OF ALLIANCE, NEBRASKA, DEALING WITH ZONING, AMENDING THE DISTRICT ZONING MAP TO SHOW THAT LOTS 5-9, ORIGINAL TOWN TO THE CITY OF ALLIANCE, BOX BUTTE COUNTY, NEBRASKA, IS NOW INCLUDED AS A C-3 (HIGHWAY COMMERCIAL DISTRICT) FROM A C-2 (CENTRAL BUSINESS DISTRICT), AND REPEALING PRIOR SECTIONS.

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

SECTION 1. Section 115-76 of the Alliance Municipal Code is amended to provide as follows:

#### 115-76. DISTRICT MAP ADOPTED

Boundaries of the districts, as enumerated in section 115-75 are hereby established as shown on a map prepared for that purpose, which map is hereby designated as the zoning district map; and said map, and all the notations, references and information shown thereon is hereby made as much a part of these regulations as if the same were set forth in full herein. The city planning commission shall keep on file in their offices an authentic copy of said map, and all changes, amendments, or additions thereto.

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When definite distances in feet are not shown on the zoning district map, the district boundaries are intended to be along existing street, alley or platted lot lines, or extensions of the same, and if the exact location of such lines is not clear, it shall be determined by the building inspector, due consideration being given to location as indicated by the scale of the zoning district map.

This is to certify that the Zoning District Map described in the Alliance Municipal Code, passed this 5<sup>th</sup> day of December, 2013, is now the official Zoning District Map.

SECTION 2. Previously existing Section 115-76, and all ordinances, parts of ordinances, resolutions, and policies of the City of Alliance in conflict with the revisions set forth herein are hereby repealed.

SECTION 3. This ordinance shall be in full force and effect from and after its approval, passage, and publication according to law.

Roll call vote on the final reading of Ordinance No. 2744 with the following results:

Voting Aye: Feldges, Seiler, Yeager, Benzel, Lewis.

Voting Nay: None.

Motion carried.

Mayor Feldges stated the passage and adoption of the ordinance was concurred by a majority of all members elected to Council, he declared it passed, adopted and ordered published.

- Board vacancies were the final agenda item.

Councilman Seiler announced that the City of Alliance continues to have vacancies on the Economic Development Plan Citizens Advisory Board. Anyone interested in serving on these Boards should contact the City Clerk's Office. Information on all of the City Boards is also available on our web site, [www.cityofalliance.net](http://www.cityofalliance.net).

- Mayor Feldges stated, "there being no further business to come before the Alliance City Council, the meeting is adjourned at 7:31 p.m."

(SEAL)

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Fred Feldges, Mayor

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Linda Jines, City Clerk