

December 1, 2015

ALLIANCE CITY COUNCIL

REGULAR MEETING, TUESDAY, DECEMBER 1, 2015

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

The Alliance City Council met in a Regular Meeting, December 1, 2015 at 7:00 p.m. in the Board of Education Meeting Room, 1604 Sweetwater Avenue. A notice of meeting was published in the Alliance Times Herald on November 24, 2015. 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 Yeager opened the December 1, 2015 Regular Meeting of the Alliance, Nebraska City Council at 7:00 p.m. Present were Mayor Yeager, Council Members Feldges, Seiler and Korber-Gonzalez. Also present were City Manager Cox, City Attorney Ediger and Acting City Clerk Krejci.

- Mayor Yeager read the Open Meetings Act Announcement.
- A motion was made by Councilman Feldges, which was seconded by Councilman Seiler to excuse the absence of Councilman Jones.

Roll call with the following results:

Voting Aye: Seiler, Korber-Gonzalez, Yeager, Feldges.

Voting Nay: None.

Motion carried.

- Council's first order of business was the Consent Calendar.

Councilman Feldges made a motion, which was seconded by Councilman Korber-Gonzalez to approve the Consent Calendar as follows:

December 1, 2015

CONSENT CALENDAR – DECEMBER 1, 2015

1. Approval: Minutes of the Regular Meeting, November 17, 2015.
2. Approval: Payroll and Employer Taxes for the period November 7, 2015 through November 20, 2015 inclusive: \$181,266.60 and \$12,859.46 respectively.
3. Approval: Claims against all funds of the City of Alliance for the period November 10, 2015 through November 24, 2015 in the amount of \$334,077.06.
4. Approval: Resolution No. 15-118 will approve an Interlocal Agreement with the Educational Service Unit Coordinating Council for Cooperative Public/Governmental Purchasing.
5. Authorization of Certification: To the Nebraska Department of Roads stating that Jeff Wolfe of M.C. Schaff has and is serving as the City's Street Superintendent from January 1, 2015 through December 31, 2016 and he holds a Class A License No. 1025.

Any item listed on the Consent Calendar may, by the request of any single Council Member, be considered as a separate item in the Regular Agenda.

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: Feldges, Korber-Gonzalez, Seiler, Yeager.

Voting Nay: None.

Motion carried.

- The Conflict Claim of Councilman Feldges, which was the travel expenses incurred while attending the Nebraska League of Municipalities Board Meeting on November 20, 2015 was the next item for consideration.

A motion was made by Councilman Seiler, seconded by Councilman Korber-Gonzalez to approve expense reimbursement in the amount of \$482.14 to Councilman Feldges.

Roll call vote with the following results:

Voting Aye: Seiler, Korber-Gonzalez.

Voting Nay: Yeager.

Abstaining: Feldges.

Motion carried.

December 1, 2015

- The next discussion item was the first reading of Ordinance No. 2792, which will approve the Preliminary Plat of the Berean Fundamental Church of Alliance. Council was provided with the following background information:

[The City of Alliance is in receipt of an application for a Preliminary Plat from the Alliance Berean Church. The Preliminary Plat application is to plat lands within corporate limits. The parcel of land to be platted is located south of 20th Street and west of Emerson Avenue.

The Berean Church is requesting to plat the lot, an alley along the south side of the lot, Colorado Avenue, and the west portion of Emerson Avenue so that the lot may be sold to a developer who may then divide the land as they see fit for single family housing.

Water and sanitary sewer were installed in 20th Street as part of Newberry Addition. Electric, the development of curb and gutter along Emerson, the development of Colorado Avenue, and a 20' alley would be the required public improvements on this plat. Before the Final Plat is approved, the Church will either need to install improvements in the platted area or provide guarantees to the City that they will be installed at a future time.

Further subdivision of the lot by the purchaser or developer will be able to be done by Administrative Subdivision if they do not dedicate any new rights of way or easements.

The property is bordered to the north, east, and south by R1a (Single Family Residential) and to the west by A (Agricultural). The land being platted is correctly zoned R1a. The lots to the north, east, and south are residential in use. The lands to the west are used for agricultural purposes.

The City of Alliance Planning Commission met at its regular meeting November 10, 2015 and found that the material presented to them was satisfactory. They voted yes on a recommendation to the Alliance City Council for the approval of the Preliminary Plat of Berean Second Addition to the City of Alliance, located in the Northwest Quarter of Section 26, Township 25 North, Range 48 West of the 6th Principal Meridian, Box Butte County, Nebraska.]

A motion was made by Councilman Feldges, seconded by Councilman Seiler to approve the first reading of Ordinance No. 2792 which Acting Clerk Krejci read by title and follows in its entirety.

ORDINANCE NO. 2792

AN ORDINANCE APPROVING THE PRELIMINARY PLAT OF BEREAN SECOND ADDITION TO THE CITY OF ALLIANCE, BOX BUTTE COUNTY, NEBRASKA;

December 1, 2015

LOCATED IN THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 25 NORTH, RANGE 48 WEST OF THE 6TH P.M. TO THE CITY OF ALLIANCE, BOX BUTTE COUNTY, NEBRASKA BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF ALLIANCE, NEBRASKA:

SECTION 1. The City of Alliance has received the application for approval of the Preliminary Plat of Berean Second Addition to the City of Alliance, Box Butte County, Nebraska; located in the Northwest Quarter of Section 26, Township 25 North, Range 48 West of the 6th P.M. to the City of Alliance, Box Butte County, Nebraska from the Alliance Berean Church.

SECTION 2. The Planning Commission held a public hearing November 10, 2015, and has recommended the approval of the Preliminary Plat.

SECTION 3. The Preliminary Plat contains information required by the City Code at Section 113-70, which is relevant to this request.

SECTION 4. The Preliminary Plat of Berean Second Addition to the City of Alliance, Box Butte County, Nebraska; located in the Northwest Quarter of Section 26, Township 25 North, Range 48 West of the 6th P.M. to the City of Alliance, Box Butte County, Nebraska, is hereby approved and the subdividers are authorized to proceed with any required public works elements and preparation of a Final Plat.

SECTION 5. This approval shall expire one year from this date unless the Final Plat has been submitted. This approval does not constitute Final Plat approval or guarantee the approval of the subdivision by the City Council or the City Council's authorization to proceed with construction of improvements within the subdivision.

SECTION 6. 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 first reading of Ordinance No. 2791 with the following results:

Voting Aye: Feldges, Yeager, Korber-Gonzalez, Seiler.

Voting Nay: None.

Motion carried.

- The next agenda item was the first reading of Ordinance No. 2793, which will amend the Alliance Municipal Code regarding designated snow routes for the City. Council was provided with the following information:

[Section 26-93 of the City of Alliance Municipal Code enumerates the designated snow routes for the City. The State of Nebraska has renumbered Flack Avenue within the corporate limits from Highway 385 to Highway 87. As a result, our

December 1, 2015

references to State Highways needs to include Highway 87 in order to have Flack Avenue remain as an emergency snow route.

Sec. 26-93. - Establishment of snow emergency routes.

The following streets are declared to be snow emergency routes within the city. The city manager or designee, but always referred to herein as the city manager) shall, at city manager's discretion, place appropriate signs or other traffic control devices indicating the existence of snow emergency routes. A designation of any street, avenue, road, or highway, or portion thereof as a snow emergency route shall in no way affect any previous designation of that street, avenue, road, or highway for any other purposes but shall be in addition thereto. The following streets or highways are designated as emergency snow streets:

- (1) U.S. Highway Nos. 385, 87 (Flack Avenue) and 2 within the corporate limits;
- (2) Cody Avenue from Third Street to Kansas Street;
- (3) Emerson Avenue from the northern corporate limits to Third Street;
- (4) Box Butte Avenue from 25th Street to First Street;
- (5) Mississippi Avenue from Tenth Street to Third Street;
- (6) Potash Avenue from Third Street to Kansas Street;
- (7) Third Street from Flack Avenue east to the corporate limits;
- (8) All of Tenth Street included within the corporate limits;
- (9) Sixteenth Street from Buchfinck Avenue to Box Butte Avenue;
- (10) Twenty-fifth Street from Emerson Avenue to Sweetwater Avenue;
- (11) Kansas Street from Highway 2 to Highway 385;
- (12) Buchfinck Avenue from Tenth Street to Sixteenth Street;
- (13) Black Hills Avenue from Third Street to Tenth Street.
- (14) Sixth Street from Mississippi Avenue to Grand Avenue;
- (15) Grand Avenue from Sixth Street to Seventh Street;
- (16) Seventh Street from Grand Avenue to Mississippi Avenue.]

A motion was made by Councilman Korber-Gonzlez, seconded by Councilman Seiler to approve the first reading of Ordinance No. 2793 which Acting Clerk Krejci read by title and follows in its entirety.

ORDINANCE NO. 2793

AN ORDINANCE AMENDING THE ALLIANCE MUNICIPAL CODE BY AMENDING SECTION 26-93, RELATING TO THE ESTABLISHMENT OF SNOW EMERGENCY ROUTES; AND REPEALING EXISTING PROVISIONS OF CITY CODE NOT CONSISTENT HEREWITH.

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

SECTION 1. The City of Alliance has established Snow Emergency Routes to facilitate travel during and after a snow storm to provide for public safety and welfare.

December 1, 2015

SECTION 2. The City of Alliance to make the emergency routes more efficient desires to make changes to the establishment of certain snow routes.

SECTION 3. The Alliance Municipal Code at Section 26-93 shall be amended as follows:

Sec. 26-93. Establishment of snow emergency routes.

The following streets are declared to be snow emergency routes within the city. The city manager or designee, but always referred to herein as the city manager, shall at city manager's discretion, place appropriate signs or other traffic control devices indicating the existence of snow emergency routes. A designation of any street, avenue, road, or highway, or portion thereof as a snow emergency route shall in no way affect any previous designation of that street, avenue, road, or highway for any other purposes but shall be in addition thereto. The following streets or highways are designated as emergency snow streets:

- (1) U. S. Highway Nos. 385, 87 and 2 within the corporate limits;
- (2) Cody Avenue from Third Street to Kansas Street;
- (3) Emerson Avenue from the northern corporate limits to Third Street;
- (4) Box Butte Avenue from Twenty-fifth Street to First Street;
- (5) Mississippi Avenue from Tenth Street to Third Street;
- (6) Potash Avenue from Third Street to Kansas Street;
- (7) Third Street from Flack Avenue to the corporate limits;
- (8) All of Tenth Street included within the corporate limits;
- (9) Sixteenth Street from Buchfinck Avenue to Box Butte Avenue;
- (10) Twenty-fifth Street from Emerson Avenue to Sweetwater Avenue;
- (11) Kansas Street from Highway 2 to Highway 385;
- (12) Buchfinck Avenue from Tenth Street to Sixteenth Street;
- (13) Black Hills Avenue from Third Street to Tenth Street;
- (14) Sixth Street from Mississippi Avenue to Grand Avenue;
- (15) Grand Avenue from Sixth Street to Seventh Street;
- (16) Seventh Street from Grand Avenue to Mississippi Avenue.

SECTION 4. That current applicable City Codes of the City of Alliance, Nebraska, and all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

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

Motion by Councilman Korber-Gonzalez, seconded by Councilman Feldges to suspend the statutory rule requiring three separate readings of Ordinance No. 2793.

Roll call vote to waive the statutory reading with the following results:

Voting Aye: Feldges, Yeager, Korber-Gonzalez, Seiler.

December 1, 2015

Voting Nay: None.

Motion carried.

Roll call vote to approve Ordinance No. 2793 on final reading with the following results:

Voting Aye: Feldges, Yeager, Korber-Gonzalez, Seiler.

Voting Nay: None.

Motion carried.

Mayor Yeager stated, "the passage and adoption of Ordinance No. 2793 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published."

- Council next conducted a Public Hearing on the recommended modification of the Alliance Municipal Code within Chapter 24 regarding Streets, Sidewalks and Other Public Places. Ordinance No. 2794 which will approve the amendment has been prepared for Council's consideration following the public hearing. Council was provided with the following background information:

[Staff has prepared revisions to Chapter 24 of the City of Alliance Municipal Code. The goal in revising the Code was to add clarity which has been done through reorganization and consolidation along with the addition of a few sections and definitions and the elimination of duplicate portions, all making the Code easier to read and comprehend.

Additions to the Code were minimal as a majority of the desired language already existed it just wasn't organized in a manner to easily find the desired content. Staff added the definition of "parkway" and "sight vision triangle" as they were needed for clarification purposes. Other additions include an updated reference to City construction standards, a section devoted specifically to the parkway, the requirement to maintain existing sidewalk in good repair, and others as highlighted in the Council packet.

Several sections were moved so all topics were placed together such as snow removal, the requirements to build, or the technical requirements. Other portions were consolidated with sections similar in intent, or eliminated as it was covered in other parts of the Code which was the case with contractor licensing.

The limitation of not allowing property owners the privilege to repair or replace existing sidewalk and driveway was eliminated. Staff does not believe it should be necessary to be a licensed contractor to replace existing sidewalk and driveway in front of one's own property and may actually deter people from maintaining

December 1, 2015

the items in good repair if they have the extra expense of hiring a contractor. This does **not** eliminate the need for a permit, inspections, or meeting City Standards.

Staff added language that requires a sidewalk to be maintained in good condition. The International Property Maintenance Code already requires that sidewalks be maintained but does not go into great detail on what constitutes a sidewalk in good condition. This new language was included as a standalone paragraph and as an addition to new structures being required to build a sidewalk on the property should it not already have a sidewalk.

The City of Alliance Planning Commission had a discussion about the existing Code at their regular meeting on October 13, 2015 and made recommendations to staff. They then held a Public Hearing at their regular meeting on November 10, 2015 wherein they voted to recommend that the Alliance City Council approve the ordinance accepting the proposed Code changes to Chapter 24 of the City of Alliance Municipal Code.]

Mayor Yeager stated “now is the date, time, and place to conduct a Public Hearing to hear support, opposition, criticism, suggestions, or observations of the taxpayers relating to the modifications of the Alliance Municipal Code regarding Streets, Sidewalks and Other Public Places and opened the public hearing at 7:12 p.m.

Community Development Director Brent Kusek was in attendance to review the changes to the Municipal Code with Council.

Hearing no additional testimony was offered, the Public Hearing closed at 7:15 p.m.

A motion was made by Mayor Yeager, seconded by Councilman Seiler to approve the first reading of Ordinance No. 2794 which Acting Clerk Krejci read by title and follows in its entirety.

ORDINANCE NO. 2794

AN ORDINANCE OF THE CITY OF ALLIANCE, NEBRASKA, AMENDING THE MUNICIPAL CODE BY MODIFYING CHAPTER 24, ARTICLES I, II, III, AND IV DEALING WITH STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, REPEALING PRIOR PROVISIONS OF THE MUNICIPAL CODE WHICH ARE INCONSISTENT WITH THIS ORDINANCE, PROVIDING FOR PUBLICATION IN PAMPHLET FORM AND PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1. Chapter 24 of the Alliance Municipal Code is amended as follows:

Chapter 24

December 1, 2015

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

ARTICLE I. - IN GENERAL

Sec. 24-1. Prohibited Activities:

- (1) Injury to streets, curbs, sidewalks, drains, grades. - It shall be unlawful for any person to willfully, maliciously, or carelessly injure, change, deface, or destroy any street, sidewalk, building, ditch, drain, curb, curb and gutter, or grade in any public right of way.
- (2) Obstructions - Except as permitted elsewhere in this code, it shall be unlawful for any person to place, leave, or permit to be placed or left, with his/her consent, on any avenue, street, alley, sidewalk, curbstone, gutter, crosswalk, or any public way, any truck, automobile, barrow, hand cart, sleigh, or other vehicle, any fence, lumber, wood, benches, seats, chairs, rubbish, animals or any other article, device, or things whatsoever. Any such obstruction or interference is declared to be a nuisance.
- (3) Projection of Objects - Except as permitted elsewhere in this code, no person shall place, erect, construct or maintain any sign, sign post, telegraph or other posts or poles, racks, advertisements, or any other device upon or across any sidewalks, streets, or alleys.
- (4) Auctions - It shall be unlawful for any person to sell at public auction on any street, alley, highway or any public grounds, any domestic animal, any goods, wares and merchandise.

Sec. 24-2. Snow removal.

- (1) It shall be the duty of the owner of every lot or parcel of land adjacent to which a permanent sidewalk shall have been constructed, to clean off and remove all snow and ice therefrom within 24 hours after such snow and/or ice shall have fallen, drifted or accumulated thereon. If, after 24 hours, the lot owner has failed to make the removal set out herein, the city manager may authorize such snow or ice removal to be done by specially hired contractors or employees of the city. In such event, the city may charge the lot owner the actual cost incurred by the city in the snow or ice removal.
- (2) Any owner who fails to clean off and remove all snow and ice as required herein, upon conviction thereof shall be deemed guilty of a misdemeanor and shall be fined \$100. Each
- (3) Property owners, lessees or renters in all areas of the city shall not move the snow from lots, driveways, or sidewalks owned or controlled by them onto the city streets or onto the neighboring lot.

Secs. 24-3 - 24-35. Reserved.

ARTICLE II. SIDEWALKS, DRIVEWAYS, CURBS, AND GUTTERS
DIVISION 1. GENERALLY

Sec. 24-36. Definitions.

December 1, 2015

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alley means the entire width between property lines of every minor way dedicated to the use of the public as a matter of right and used primarily for utility services and as secondary access to the back of properties otherwise abutting on or adjacent to a street.

Commercial walks means the pedestrian sidewalks which extend from the street right-of-way to the curblines.

Curb grade means the elevation of the top face or the highest point of the curb.

Curb walks means pedestrian sidewalks constructed adjacent to existing curb.

Curblines means the back of, or back face of constructed curbing or combination curb and gutter, designed to delineate the edge of the traveled portion of a roadway surface and to serve as a channel for stormwater. Curblines shall be determined by street right-of-way and roadway paving width standards of the city.

Driveway means an access drive or entrance way to property from a roadway and situated within a street, avenue, or alley.

Parkway means the area between the property line and the back of the curb and gutter.

Roadway means that portion of the street used for vehicular traffic between established curblines, or where no curbs are installed it shall mean that portion of the street which is, or has been, normally and regularly used for vehicular traffic. Where opposing traffic is separated by a median, wall, or other divider totally within the street right-of-way, it shall mean that portion of the right-of-way between curblines and such dividers.

Standard walks means the pedestrian sidewalk installed in the parkway and located parallel to and eight inches inside the street right-of-way.

Street or *avenue* means the entire width between property lines of every thoroughfare or way dedicated to the use of the public as a matter of right for purposes of primary access, travel and transportation.

Sec. 24-37. General Requirements

- (1) Permit Required: It shall be unlawful to break out, remove, cut, alter, construct, repair or reconstruct any sidewalk, driveway, curb, or curb and gutter without first having secured a construction permit from the city manager or designee. Application for such permit shall include a site plan detailing the location, nature of the intended construction or repair, and such other information as may be deemed necessary by the city manager or designee. The fee for such permit shall be as established by ordinance.
- (2) City Standards: No sidewalk, driveway, curb, or curb and gutter shall hereafter be constructed, repaired, or reconstructed unless it is constructed of Portland cement

December 1, 2015

concrete and in accordance with provisions of this article and city standards. Copies of City Standards are found on the City Website, in the Community Development Offices, and at the Public Works building and are hereby adopted by reference the same as if printed herein.

- (3) Supervision and Inspections: The construction, repair, or reconstruction of all sidewalks, driveways, curbs, and curb and gutter, located on public right-of-way shall be under the supervision of the city manager or designee or some competent person designated by him for that purpose, who shall inspect all work and materials used therein. The contractor or property owner shall be required to notify the city manager or designee and request an inspection of the work and receive approval prior to placing any concrete. Excavation and form work shall be completed before approval by the city manager or designee. Any work not performed in compliance with this article may be ordered removed and replaced after inspection.
- (4) Repairs-Time Requirements
 - (a) Damaged Concrete: If any person shall break or damage any sidewalk, driveway, curb, or curb and gutter, they shall cause the same to be repaired in accordance with the provisions of this article within ten (10) days of the incident.
 - (b) Removal for Repair: It shall be unlawful for any person to break out, remove, cut and/or alter any sidewalk, driveway, curb or curb and gutter or any portion of any sidewalk, driveway, curb or curb and gutter except to repair or reconstruct such sidewalk, driveway, curb or curb and gutter and then only after having secured a permit for such repair or reconstruction. It shall be unlawful for any person having broken out, removed, cut and/or altered any sidewalk, driveway, curb or curb and gutter or any portion of sidewalk, driveway, curb or curb and gutter to fail to complete the reconstruction or repair thereof within 30 days after breaking out, removing, cutting, and/or altering such sidewalk, driveway, curb or curb and gutter. .

Secs. 24-38 - 24-65. - Reserved.

DIVISION 2. CONTRACTORS

Sec. 24-66. Contractor licensing.

- (1) Licensing Required: Except as provided in Section 24-67, no person shall hereafter construct, repair, or reconstruct any sidewalk, driveway, curb, or curb and gutter, or break out, remove, cut, or alter any sidewalk, driveway, curb, or curb and gutter upon or within any of the streets, avenues, or alleys of the city without first having obtained a license as a cement, general, or repair and maintenance contractor. The city shall be privileged to perform such work without the necessity of becoming a licensed contractor.
- (2) The application process for becoming a licensed contractor in the City of Alliance is found in Chapter 105 of the Alliance Municipal Code.

Sec. 24-67. Repairs by Adjacent Property Owner.

December 1, 2015

Repair of existing sidewalks and driveways, may be performed by abutting property owners providing that:

- (1) An application for a permit is filed with the city manager or designee and such permit is issued;
- (2) Such work is performed in accordance with all provisions of this article and adopted city standards;
- (3) The repair would result in all of the sidewalk abutting upon any lot or parcel of real estate owned by one owner being placed in good repair;
- (4) Driveway repair shall result in the entire driveway area between the curblineline and property line being placed in good repair.

Secs. 24-68 - 24-98. Reserved.

DIVISION 3. SIDEWALK AND PARKWAY REQUIREMENTS

Sec. 24-99. Required Construction and Maintenance.

- (1) New Construction: All newly constructed houses, businesses, or accessory buildings, \$2,500.00 or more in value, will construct and maintain in good repair, a sidewalk within the street or streets right-of-way bordering the owner's lot or land, except as provided hereafter.
- (2) Renovations: All homes or businesses currently without sidewalks on any lot, lots, or land abutting on any street, avenue or part thereof and doing renovation or rehabilitation to the building or buildings on said lot, lots, or land costing \$5,000.00 or more, as shown on the application for building permit, verified by an estimate of costs, will construct and maintain in good repair, a sidewalk within the street or streets right-of-way bordering the owner's lot or land.
- (3) City Council: The city council may require a sidewalk to be built on any lot, lots, or land currently without buildings or structures, where the lot, lots, or land are a connector between existing sidewalks on either side of said lot, lots, or land. In the event that the city council makes such requirement regarding any such lot, lots, or land, the provisions with respect to enforcement of the requirement under Section 24-99(5) of this code shall apply.
- (4) Maintenance: Any sidewalk that does not conform to this code or to city standards may be deemed a nuisance and ordered replaced or repaired. This includes but is not limited to corner sidewalks where ADA accessible ramps have not been installed, heaving or uneven joints, variations in slope, pooling of water, cracking and broken concrete, etc.
- (5) Failure to Construct or Repair: In the event that the owner of any lot, lots, or land, abutting on any street, avenue, or part thereof shall fail to construct or repair any sidewalk abutting the owner's lot, lots, or land, within the time and in the manner as directed and required herein after having received due notice to do so, the city council shall have the power to cause any such sidewalks to be constructed or repaired and assess the costs thereof against such property. In the event the property owner is a nonresident

December 1, 2015

of the county in which the property is located, the city council shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. The owner of the lot, lots, or land shall be liable for all damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk abutting said property.

(6) Exceptions:

- (a) Sidewalk Exemption Boundary: Within the following boundaries where the streets and sidewalks were platted in a grid pattern, there shall be contiguous sidewalk on the north side of the east-west streets, except when construction, traffic pattern or public safety dictate construction on both sides of the street and/or the south side. The boundary of such exception shall begin at First Street and Cody Avenue, north to Third Street, east to Black Hills Avenue, north on Black Hills Avenue to Eighth Street, west on Eighth Street to Dakota Avenue, north on Dakota Avenue to Tenth Street, east on Tenth Street to the alley between Black Hills Avenue and Platte Avenue, north to Sixteenth Street, east on Sixteenth Street to Box Butte Avenue, south on Box Butte Avenue to Twelfth Street, east on Twelfth Street to Flack Avenue, south on Flack Avenue to First Street, west on First Street to Cody Avenue. Property owners along the south side of the east-west streets may construct a *standard sidewalk* if they choose to do so.
- (b) Cul-de sacs: Sidewalks shall not be required along the frontage of a cul-de-sac as defined in Section 113-2 of this code, when the length of the cul-de-sac is three hundred feet (300') or less measured along the center of the street from the ingress right-of-way line to the radius point.
- (c) Causing undue hardship - Building permits will not be issued without the sidewalk construction as part of the project unless in the judgment of the city manager or designee the construction of a sidewalk would place an undue hardship on the requesting property owner. An undue hardship is an adversity not experienced by other property owners within the city. The lack of connecting sidewalks is not a hardship.

Sec. 24-100. Types of Sidewalks.

(1) *Commercial Walks.*

- (a) *Commercial walks* may be installed upon any street or avenue within the C-0, C-2, C-3, M-1, M-2, or M-3 zoning districts.
- (b) *Commercial Walks* must be constructed on the following streets or portions of streets:
 - (i) West and east sides of Laramie Avenue between Second and Fourth Streets.
 - (ii) West and east sides of Box Butte Avenue between First and Sixth Streets.
 - (iii) North side of First Street between Laramie Avenue and Niobrara Avenue.
 - (iv) South side of Second Street from the west line of Lot 1, Block 28, Original Town, to the east line of Lot 17, Block 27, Original Town.

December 1, 2015

- (v) North side of Second Street from Laramie Avenue to the east boundary line of Lot 18, Block 22, Original Town.
 - (vi) South side of Third Street from Toluca Avenue to Niobrara Avenue.
 - (vii) North side of Third Street from Big Horn Avenue to Niobrara Avenue.
 - (viii) South side of Fourth Street from the west line of Lot 1, Block 17, Original Town, to Niobrara Avenue.
 - (ix) North side of Fourth Street from Laramie Avenue to Niobrara Avenue.
 - (x) North side of Fifth Street from the west line of Lot 21, County Addition to Niobrara Avenue.
- (c) Where curbs are installed commercial walks shall be constructed only with the approval of the city manager or designee.
- (2) *Curb walks*: Curb walks shall not be permitted except in the following circumstances:
- (a) If it is replacing an existing *curb walk*.
 - (b) If the properties adjacent to the lot have been developed with *curb walk*.
 - (c) In case an area has both *standard walk* and *curb sidewalk* not contiguous to each other, or some other unusual circumstances, the city manager or designee shall determine the type of sidewalk to be installed.
- (3) *Standard walks*: *Standard walks* shall be considered the minimum required sidewalk type. Portions of this code may allow or require other types of sidewalks.

Sec. 24-101. Construction Requirements.

- (1) Width
- (a) *Curb Walks* – All curb walks must be at least four feet (4') wide but are limited to a maximum of five feet wide (5'); or must be constructed to match any conforming existing *curb walk* or *standard walk*.
 - (b) *Standard Walks* - All *Standard Walks* shall be constructed at least four feet (4') wide but limited to five feet (5') wide unless otherwise allowed or required below.
 - (i) Standard walks of six feet (6') in width shall be maintained on the west side of Box Butte Avenue from Sixth Street to Twelfth Street and the east side of Box Butte Avenue from Sixth Street to Tenth Street.
 - (ii) Schools and Churches may install *commercial sidewalks* however *standard walks* installed adjacent to all Schools and Churches must be at least four feet eight inches (4'8") in width.
- (2) Thickness: Concrete sidewalks shall be a full four inches thick except they shall be thickened to a full six inches across driveway entrances.
- (3) Slope: All sidewalks shall be sloped one-eighth to three-eighths of an inch per foot upward from the curb side to the property line side. Sidewalk grade shall be maintained across driveways.
- (4) Parkway:

December 1, 2015

- (a) Grade: Grades shall be such as will result in a slope of between one-eighth inch and five-eighths inch per foot upward from the curb line to the side of the sidewalk nearest the center of the street. In case of extreme grade changes the city manager or designee may waive this requirement on an individual basis.
- (b) Paving: To aid in the installation and maintenance of City utilities in the right of way, paving or the installation of any solid surface or solid subsurface material in the parkway between a standard sidewalk and the back of the curb and gutter is not permitted. This code does not restrict the paving of *commercial walks* where allowed.

Sec. 24-102. Vaults or cavities under sidewalks.

Underground vault space or cavities under public sidewalks as part of buildings located within the city are maintained solely at the sufferance of the city. The city reserves the authority to require structural upgrades or removal at the owner's cost, if determined to be in the interest of public safety.

Secs. 24-103 - 24-109. Reserved.

DIVISION 4. CURB, GUTTER, AND DRIVEWAYS

Sec. 24-110. Driveways.

- (1) Requirements:
 - (a) Thickness: Driveways shall have a minimum thickness of a full six inches from the curb to the property line.
 - (b) Width: Maximum width of driveways and the location and spacing of driveways shall comply with zoning and subdivision regulations for the land zoning.
 - (c) Curb Cuts: It is not permissible to break the back off of existing curb to create a driveway. Where curb and gutter is removed it shall be removed to the nearest joint from each side of the driveway if the remaining section of curb is less than three feet in length. The flow line of replacement curb and gutter shall be maintained. Construction and expansion joints shall be placed as specified in the city standards.

Sec. 24-111. Curb and Gutter.

- (1) Requirements: All curb and gutter must be constructed as detailed in Section 24-37 of this code.
- (2) Existing Curb line: The distance from curb line to curb line defines the width of the roadway of any street or avenue. This distance shall be as defined in the city subdivision regulations for the classification of the roadway. Existing roadways shall be maintained as existing on February 19, 1976, as a minimum requirement but may be required to be expanded in width if deemed necessary by the city council to be in the public interest.

Secs. 24-112 - 24-131. Reserved.

December 1, 2015

ARTICLE III. EXCAVATIONS

Sec. 24-132. Definitions.

The Definitions found in Sec 24-36 shall apply to Article III of Chapter 24.

Sec. 24-133. General Requirements:

(1) Public Safety:

- (a) Exposed Excavations Prohibited: No person shall excavate any lot or part of a lot and leave the same exposed and open in such manner as to endanger the safety of any person passing along, over, or upon any avenue, street, or sidewalk therein.
- (b) Open Excavation Lighting: The holder of each permit shall notify the city manager or designee not later than 1:00 p.m. on each Friday of any excavations that need inspected and are ready to fill. The holder of each permit shall light and maintain, until the following Monday, all excavations not reported by 1:00 p.m. Friday.
- (c) Barricades: Any person licensed to do construction work in any street, avenue or alley shall provide, at his/her own expense, substantial barricades with his/her name clearly marked thereon. These barricades shall be type II of the federal uniform and traffic control devices for streets and highways. In addition to the barricades, sufficient lights shall be used to protect the public.

- (2) Breaking Pavement: It is hereby declared to be unlawful for any person to break paving except by sawing to a depth of at least two inches; provided, however, sawing is not required if the paving is partially granite or if permission is obtained from the director of public works to break by means other than sawing.
- (3) Need for Inspections: The city manager or designee shall make such inspections as are necessary to determine whether the work performed by the permit holder pursuant to this article is in accordance with the requirements of this article, and if the city manager or designee determines that the replacement of any *parkway* excavation is not performed in compliance hereof, it shall immediately notify the contractor or other person having the permit to correct the deficiency.
- (4) Failure to Comply: Any person who shall fail, neglect, or refuse to comply with or shall violate any requirements or provisions of this article shall be charged a double fee for the excavation permit, and a double fee for the permit required to replace any removed paving. If the same individual shall violate this article twice within any six-month period they shall be found guilty of a misdemeanor, and if the individual is a licensed contractor, the contractor's license shall be suspended automatically for a period of 90 days.

December 1, 2015

Sec. 24-134. Permits.

(1) Required; procedure.

- (a) It is hereby declared to be unlawful for any person, whether operating under a franchise or contract or not, to excavate the surface or the ground beneath the surface of any street, avenue, or alley within the city without a permit therefor from the city clerk or designee in pursuance of a written application therefor.
- (b) The applicant for a permit shall specify in the application definitely the location, extent and character of the work proposed to be done, and the time when it is to be done, and shall pay a fee to the city for each permit issued the sum established by the city.
- (c) Every application for a permit to make any excavation in connection with the water or sewer systems of the city shall be accompanied by the written consent of the city manager or designee.
- (d) Upon the filing of any application as prescribed in subsections (1)(a) through (c) of this section and compliance with any other requirement of this article, the city clerk or designee shall issue a permit for such excavation, subject to the provisions of this chapter and the other applicable sections.

(2) Terms; time limit: Permits issued pursuant to this chapter shall be numbered consecutively and shall be valid for a period of ten (10) days from their respective dates, and no work shall be done under any such permit after the expiration of such ten (10) days. Each permit shall contain the name of the party authorized to use the same, the time limit within which the same may be used, and the location and nature of the work to be done.

(3) Issuance Restrictions:

- (a) Contractors: Permits pursuant to this chapter shall be issued only to persons licensed to make excavations in any street, avenue, or alley.
- (b) Proof of Insurance: Every person engaged in excavating the streets, avenues, alleys or other public places of the city for the purpose of laying, removing or repairing gas mains or pipes shall be licensed by the city and is hereby required to file with the city a certificate of insurance as provided under the licensing requirements of this code for general contractors for damages or injuries to persons or property arising from any negligence or mismanagement in doing or protecting such work, and that such person will restore the streets, sidewalks and pavements over all pipes laid or repaired, and fill all excavations made by him so as to leave such streets, avenues, alleys and public places in their original condition so far as practicable, and keep and maintain the same in good order to the satisfaction of the city manager or designee for a period of 90 days thereafter. The regulations contained in this section are in addition to those contained elsewhere in this chapter and shall not be construed to in any degree modify, alter, waive or repeal any other provision of this chapter.
- (c) Back charges shall be paid immediately and no permit shall be issued to anyone who has an unpaid charge hereunder.

Sec. 24-135. Refilling.

December 1, 2015

(1) Refilling by City:

- (a) Where any permit is issued for excavating in any street, avenue, or alley (excluding the parkway) all work of replacing paving shall be done to city standards. Filling trenches or holes and tamping shall be accomplished by the contractor to city specifications.
- (b) The charges for replacing concrete or brick paving where cuts have been made for installing sewer, water, gas or conduits of any nature, whether they be telephone, electric or otherwise, and for filling in excavations in unpaved streets, avenue, and alleys and tamping the same with a mechanical tamper, shall be as established by the city.
- (c) Tunneling or under cutting is not permitted and if such does occur, the holder of the permit shall be penalized on a square foot basis on all tunneling or under cutting.
- (d) When it is necessary to remove material unfit for filling trenches and substitute suitable material, there shall be an extra charge based on the time required for the removal and replacement of such material.

(2) Refilling parkway area.

- (a) Responsible Party: Where any permit is obtained for the excavating in any street, avenue, or alley, which includes the parkway, all work of replacing paving, filling any trenches or holes, tamping and reseeding in such parkway, shall be done by the contractor or other person having the permit to excavate in such parkway.
- (b) Replacement of the parkway excavation shall be done in a workmanlike manner, so that the area excavated shall be returned substantially to its previous condition. This shall include but not be limited to appropriate tamping, seeding, and the repaving or replacing of sidewalks and driveways.
- (c) Any nonconforming paving removed during excavation of the parkway may not be replaced. All sidewalks and driveways must be reconstructed to city standards and code.
- (d) Such parkway area between curblines and lot lines is the property of the city and the contractor or other excavator when working in such area shall comply with all applicable provisions of this code and all appropriate ordinances, resolutions and rules governing the use of streets, avenues and alleys and particularly shall comply with section 24-133(c).

Secs. 24-136 - 24-163. Reserved.

ARTICLE IV. VEGETATION

Sec. 24-164. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

December 1, 2015

Private tree means any woody plant growing on property privately owned.

Public tree means any woody plant growing or located on public property.

Right-of-way means any dedicated street of the city, including that portion which lies between the roadway proper and the platted lot line of private parcels of property, regardless of the location of public sidewalks.

Sight Vision Triangle means the triangle created at the intersection of the front property line and the side street property line. It is created by measuring 25 feet from the intersection along each property line and drawing the hypotenuse between these two points.

Sec. 24-165. Purpose.

It is the purpose of this chapter to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance and removal of trees, shrubs and other plants within the public rights-of-way in the city.

Sec. 24-166. Enforcement of article.

It shall be the duty of the city manager or designee to enforce the provisions of this chapter.

Sec. 24-167. Authorized to regulate and direct cultivation and planting.

The city manager or designee is hereby authorized to regulate and direct the cultivation and planting of trees, shrubs and vines on all public property and rights-of-way in the city.

Sec. 24-168. Planting vegetation.

It shall be unlawful for any person to plant or cause to be planted, any living vegetation, except as approved by the city manager or designee, in the public-rights-of-way of the city. An approved listing of such vegetation shall be maintained by the city manager or designee.

Sec. 24-169. Emergency removal.

In the event of an emergency endangering life or property, any person may trim or remove any tree, from the public rights-of-way of the city, but shall, within 24 hours, make a report to the city manager or designee. Such report shall describe the location, the work done and the nature of the emergency.

Sec. 24-170. Planting in the right-of-way.

- (a) *Tree planting.* No person shall plant any tree within any public right-of-way in the city without first contacting, and obtaining permission from the city manager or designee, by filing an application in a form designated by the city manager or designee. The city manager or designee shall maintain a list of trees permitted for placement on all public rights-of-way.
- (b) *Procedure.* In the application to plant a tree within the public right-of-way, the applicant shall state the variety and proposed location of each tree to be planted within the affected right-of-way. The city manager or designee shall investigate the locality named in the application and shall approve the location of the proposed trees if such placement will, in the opinion of the city manager or designee, allow the normal growth and development of each

December 1, 2015

tree. Furthermore, approval will only be granted if the applicant has complied with all other applicable sections of this chapter.

- (c) *Varieties approved.* The city manager or designee shall maintain a list of permitted plant varieties to be planted in public rights-of-way in the city.
- (d) *Planting area.* No tree shall be planted in a public right-of-way in a location where sidewalks are constructed or contemplated unless there is a clear space of at least four feet between the back of the curbline and the sidewalk line nearest the street. All trees planted therein shall be centered between the back of the curbline and the sidewalk line nearest the street.

Sec. 24-171. Planting distance and vision clearance.

- (a) All trees planted in any public right-of-way shall be a minimum of 25 feet apart. In the case of a corner lot, all trees planted in a public right-of-way shall also be a minimum of 25 feet from the property line as if extended into the right of way. Furthermore, in areas of the city which are not platted in a uniform pattern, tree planting in the public rights-of-way shall be as designated by the city manager or designee in such a manner that traffic vision and public safety are not impaired by improper planting.
- (b) No structures, shrubs, trees, or other plant material shall be built, planted, maintained, or allowed to grow so as to hinder vision in the vicinity of an intersection of two streets in such area defined as the *Site Vision Triangle*.
- (c) The term "to hinder vision" shall be taken to mean that said plant material has leaves, needles, branches or other foliage during any period of the year, and structures of any type as defined in the zoning chapter exist, between two feet and eight feet above the crown of the adjacent street.

Sec. 24-172. Hedges.

Hedges shall not be planted along the sidewalk line nearest the lot interior unless the same is planted no closer than two feet from the sidewalk line. All front yard (and side yard in the case of corner lots) hedges shall be trimmed or pruned so that they shall not overhang any sidewalk and so that no hedge so located shall ever exceed 36 inches in height.

Sec. 24-173. Spraying and removal.

The city, through the city manager or designee, may spray or otherwise treat any trees or other growth located in the public rights-of-way. The city shall have the authority to move any personal property which might be damaged by said spray and shall return the same when the spraying is completed. The city shall not be liable for any damage caused by said spray. The city may, through the city manager or designee, remove or order the removal by the appropriate property owner, any tree or shrub located in the public right-of-way which does not comply with city codes or regulations. All trees or shrubs removed from the public right-of-way shall be completely removed, including the roots and stumps, which shall be removed to a depth of at least six inches. In addition, the city may trim trees planted on the public rights-of-way which have been badly damaged. Furthermore, the city manager or designee shall have the authority to order the removal of a tree or part of a tree which is damaging the abutting sidewalk or curb.

Sec. 24-174. Tree topping.

December 1, 2015

It shall be unlawful as a normal practice for any person, firm or city department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the trees. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this article at the determination of the city manager or designee.

Sec. 24-175. Injuring or defacing trees or shrubs.

It shall be unlawful to injure or deface any tree or shrub which is the property of another person or which is located in a public right-of-way.

Sec. 24-176. Utility lines.

All hedges or trees planted on private property shall be located a minimum of five feet from the boundary of any alley. No tree or hedge shall be allowed to grow in such a manner that it shall interfere with any private or public utility line either above or below ground. Any public or private utility authorized to operate within the city's rights-of-way may trim or remove, if necessary, any tree, hedge or shrub which obstructs its lines, wires or pipes, including those portions of their systems known as services. Trimming or removal will be done in accordance with the standards of the National Arborist Association.

Sec. 24-177. Overhang.

No limb or branch of any tree shall overhang a public sidewalk at a height lower than eight feet. Any branch, which is part of a mature tree and whose base is less than eight feet from the ground, shall be removed.

Sec. 24-178. Trees and shrubs—Acts declared nuisances.

- (a) It shall be unlawful and is declared to be a nuisance for any property owner to maintain or permit to stand upon owner's property, a dead tree, the dead part of a tree, a stump, any diseased or damaged tree, any diseased or damaged part of a tree, any healthy tree or part of a healthy tree which is a menace to public safety or which endangers any building or other property.
- (b) It shall also be unlawful and declared to be a nuisance for any property owner, or any lessee or occupant of any property to permit the limbs, branches or foliage of any tree upon such property to project into or extend over any public sidewalk, street, lane or alley in such a manner as to create a clearance of less than eight feet between those branches and the surface of any public sidewalk and 13½ feet between those branches and the surface of a street, lane or alley.

Sec. 24-179. Same—Examinations, notice to abate nuisance.

- (a) *The right of examination.* The city manager or designee shall have the right to enter upon any private property where necessary and examine any tree, whether alive, dead, standing or fallen, and any wood pile, for the purpose of determining whether the same are contagiously diseased. Such examinations shall include the right to take samples from such trees and wood piles for laboratory testing purposes.

December 1, 2015

- (b) *Notification to remove nuisance.* The city manager or designee shall notify the owner or owners, or the agent of such owner or owners, of any land in the city whereon there are situated any trees or shrubs, or any tree or shrub conditions, found by examination to be a nuisance as defined in section 24-178. Any such notice shall require the owner to abate such nuisance within ten days from the date thereof.
- (c) *Noncompliance.* The city manager or designee is hereby authorized and instructed, after the expiration of ten days from the date of notice, and noncompliance therewith, to abate such nuisance by causing such trees or shrubs, which are deemed to be a nuisance under this section, to be removed, pruned or sprayed at the expense of the owner of the land whereon the same stand.

Sec. 24-180. Same - Duty of landowner, regulations by city.

- (a) The owner, agent or occupant of any land abutting a public street shall keep the trees located within the public right-of-way section of the street so abutting, trimmed, pruned and sprayed in such a manner as will remove any hazard to life or property, preserve or promote health, vigor and a pleasing outline of the trees and shall water, fertilize and otherwise care for the tree to maintain it in a healthy vigorous growing condition.
- (b) It shall be unlawful for any person, other than an employee of the city in the regular discharge of his duties, to plant, grow, keep, maintain or cause to be planted, grown, kept or maintained any tree or shrub upon the public rights-of-way of the city, until such person has obtained written permission to do so from the city manager or designee.
- (c) It shall be unlawful for any person, other than an employee of the city in the regular discharge of the employee's duties, to cut down and remove any tree from the public rights-of-way of the city until such person has obtained written permission to do so from the city manager or designee.

SECTION 2. All ordinances or 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 published in pamphlet form, and shall be effective upon its passage and approval.

Roll call vote on the first reading of Ordinance No. 2794 with the following results:

Voting Aye: Korber-Gonzalez, Yeager, Feldges, Seiler.

Voting Nay: None.

Motion carried.

- Council next conducted a Public Hearing on the modification of the Alliance Municipal Code regarding off street parking. Ordinance No. 2795 which will approve the amendment has been prepared for Council's consideration following the public hearing. Council was provided with the following background information:

[Staff has prepared revisions to Section 115-173 of the City of Alliance Municipal Code. The goal in revising the Code is to make it easier to read and understand.

December 1, 2015

This has been done through reorganization, consolidation, addition of a few sections, and eliminating language found elsewhere in the Code.

Additions to the Code were very minimal as a majority of the desired language was already there, it just wasn't organized well enough to make it easy to find. Staff added a "Generally" section to compile a list of requirements for all off street parking and then segregated single and two-family dwellings into their own subsection so they would not be subject to the requirements of commercial lots. Other additions include an updated reference to storm water requirements and the way dwellings are allowed to construct parking, as well as others which are highlighted in the Council packet.

Several sections were moved so all topics were placed together such as technical requirements, single and two-family dwellings and lighting requirements. Other portions were consolidated with sections similar in intent, or eliminated as it was covered in other parts of the Code which is the case with public sidewalks.

The exclusion of rock or gravel as a parking surface was eliminated or the rear yard of single and two-family dwellings. The current Code is contradictory as to whether or not a permit is required for single- or two-family dwellings. The proposed new language requires a building permit for concrete off street parking for these uses; however, it functions more as a zoning permit with a flat fee similar to the way driveways in these areas are presently handled. Staff believes a permit is needed as we have fielded complaints of people routing storm water onto their neighbor's lot. The proposed code adds the requirement for a site plan showing the location of the paving and where storm water will be routed in order to get a permit to install the driveway or parking area. Technical drawings will not be required.

Staff added language that requires compliance with the City of Alliance Master Drainage Study for commercial type parking lots. This is necessary as much of our storm sewer system was designed and constructed in the late 1920s and is not able to accommodate the extra runoff from new parking lots.

The City of Alliance Planning Commission had a discussion about the existing Code at their regular meeting on October 13, 2015 and made recommendations to staff. The Commission held a Public Hearing at their regular meeting on November 10, 2015 and voted to recommend that the Alliance City Council approve the ordinance accepting the proposed Code changes.]

Mayor Yeager stated "now is the date, time, and place to conduct a Public Hearing to hear support, opposition, criticism, suggestions, or observations of the taxpayers relating to the zoning regulations in regards to off street parking and opened the public hearing at 7:17 p.m.

Community Development Director Brent Kusek was in attendance to review the proposed changes to the Alliance Municipal Code.

December 1, 2015

Councilman Korber-Gonzalez requested the term "parkway" be explained and questioned if a different term should be used to eliminate confusion.

Hearing no further testimony, the Public Hearing closed at 7:19 p.m.

A motion was made by Councilman Yeager, seconded by Councilman Korber-Gonzalez to approve the first reading of Ordinance No. 2795 which Acting Clerk Krejci read by title and follows in its entirety.

ORDINANCE NO. 2795

AN ORDINANCE OF THE CITY OF ALLIANCE, NEBRASKA, AMENDING THE MUNICIPAL CODE BY MODIFYING SECTION 115-173 RELATING TO OFF-STREET PARKING; SOLID WASTE COLLECTION; PUBLIC SIDEWALKS, REPEALING PRIOR PROVISIONS OF THE MUNICIPAL CODE WHICH ARE INCONSISTENT WITH THIS ORDINANCE, PROVIDING FOR PUBLICATION IN PAMPHLET FORM AND PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1. The Alliance Municipal Code at Section 115-173 shall be amended as follows:

Sec. 115-173. Off-street parking and garbage collection.

(1) Generally:

- (a) Required to construct: For all buildings or structures hereafter erected, constructed, reconstructed, moved, or altered, off street parking in the form of private garages, carports, or open areas made available exclusively for that purpose shall be provided except in the C-2, Central Business Zoning District.
- (b) Time limit: All parking areas and drives leading thereto, shall be ready for use upon occupying a building except that the building official or designee may permit a delay, not to exceed six months, for parking surface in case of adverse weather conditions.
- (c) Public alleys: A public alley may only be used as part of the maneuvering space required for off street parking.
- (d) Driveways: The maximum number of driveways shall be one per 40 feet of lot frontage.
- (e) Vacant lots: A vacant lot is not permitted to be used as a parking lot unless the code requirements are met for the creation of off-street parking.

(2) Single and Two Family Dwelling Parking Requirements:

December 1, 2015

- (a) Permit required: A Zoning Permit is required for construction, expansion, or alteration of all parking areas and drives leading thereto. The permit application shall be accompanied by a site plan showing the location of the work in relationship to property lines and existing structures, the type of paving material, and how water runoff will be routed.
 - (b) Storm water runoff: Storm water may not be routed to the neighboring lot.
 - (c) Number of spaces: There shall be provided two off-street parking spaces for each family unit.
 - (d) Location:
 - (i) Such parking areas must be located on the same lot as the main building or buildings, or in a community garage on the same block. Parking may be head-in from a public street.
 - (ii) Parking areas and drives leading thereto may be constructed adjacent and parallel to the property line.
 - (e) Construction material: Off-street parking spaces and drives leading thereto shall be paved with Portland cement, asphaltic concrete, paving brick, gravel, or rock, provided that any gravel or rock shall not be allowed in the front or side yards.
 - (f) Width: One and Two Family Dwellings are exempt from a maximum driveway width on the lot but are limited to 30' wide curb cut and 24' wide driveways in the City right of way.
- (3) Other Land Use Off Street Parking and Driveway Requirements:
- (a) Permit required: A Building Permit is required for all off-street parking lots, drives leading thereto, curbs, and drainage facilities within corporate city limits. A permit is required for any creation, improvements, or alterations. The application shall include, but is not limited to, the following:
 - (i) The name and address of the applicant;
 - (ii) A statement that the applicant is the owner of the property or the owner's agent, and a description of such property;
 - (iii) A scale drawing of the proposed parking lot for which a parking permit is requested, including adjacent property lines, present and proposed sidewalks, and access from all streets and alleys. Drawing should designate appropriate measurements, including ingress and egress locations, landscaping, parking layout, plan for handling storm water drainage, lighting, and surface material (type, depth and subsurface preparations);
 - (iv) A statement of the off-street parking lot needs and purposes for the permit.
 - (v) A permit fee will be required if the request is not part of a construction building permit, and will be based on the value of improvements according to the building department fee schedule as adopted by the city council.

December 1, 2015

(b) Number of spaces: The following table shall be used as a guideline in determining the number of off-street parking spaces required of the land use as listed:

Land Use	Number of Spaces
Hospitals	0.40—1.2 per bed
Nursing homes	0.20—0.40 per bed
Day care	0.75—1 per employee
Industrial	0.33—0.5 per employee
Commercial recreation	
Indoor	5—7 per 1,000 gfa
Outdoor	0.25—0.35 per patron
Bowling	4—5 per 1,000 gfa
Auditorium (churches, theaters, etc.)	30% of seating capacity
Taverns, dancing	8—12 per 1,000 gfa
Restaurants	
Sitdown	8—11 per 1,000 gfa
Fast-food	10—17 per 1,000 gfa
Medical/dental/veterinary clinic	3.5—5.5 per 1,000 gfa
Wholesale, warehouse	0.33—0.5 per employee
Office	
Bank/insurance	2.5—3.3 per 1,000 gfa
General office	2.0—3.5 per 1,000 gfa
Motor vehicle sales and service	2.0—3.5 per 1,000 gfa
Retail	
General	3—5 per 1,000 gfa
Shopping center	3—5.5 per 1,000 gfa
Hotels, motels	0.3—1 per sleep unit
Multi-Family Housing	1.5 per dwelling unit

Note. gfa = gross floor area

December 1, 2015

- (c) Reduced number of spaces: The Board of Adjustment may permit the paving of fewer than the required number of spaces in cases where the immediate occupant of the property clearly shows that fewer spaces are needed at that time provided that additional spaces sufficient to fully meet these regulations must be available for improvement and use at such time as the need may arise in the opinion of the City Council. The location and layout of both the initial spaces and the ultimate required spaces shall be shown on an accurate plan endorsed by the Board of Adjustment and kept on file by the building official or designee.
- (d) Construction material:
 - (i) C-2, C-0, and all Residential Zoning Districts: All required parking in these districts shall be paved with Portland cement, asphaltic concrete, or paving brick unless otherwise provided for in this code.
 - (ii) All other Zoning Districts: The minimum parking lot surface material shall be gravel.
 - (iii) The thickness of material shall be determined by the city manager or designee giving due consideration to the likely use of the facilities heavy duty vehicles and anticipated degree of use.
- (e) Striping/markings: Required off-street parking areas for three or more automobiles, excluding private residential use, shall have individual spaces marked for hard surface parking lots.
- (f) Prohibited activities:
 - (i) Head-in parking from a public street or highway, excluding alleys, shall not be allowed except as otherwise permitted by code.
 - (ii) Signs: No signs shall be permitted within the required parking areas except those necessary for the orderly parking thereon.
 - (iii) No parking or maneuvering incidental to parking shall be on any public street or walk; lot design shall be that any automobile may be parked and unparked without moving another.
- (g) Ingress and egress shall be by means of paved driveways constructed in accordance with city standards based on zoning as follows:
 - (i) RR, R1 through R-5, and C-0 maximum width of 24 feet.
 - (ii) C-1, C-2, and C-3 shall form and maintain driveways no less than 30' wide but no greater than 35' wide.
 - (iii) M-1 through M-3 shall form and maintain driveways no less than 30' wide but no greater than 40' wide.
 - (iv) The minimum distance between driveways shall be twelve feet (12') except in single or two family residential dwellings.
- (h) Setbacks:
 - (i) The back of the curb of a paved parking area shall not be closer than three feet to a property line unless wheel stops are placed and maintained at the three foot line.

December 1, 2015

- (ii) R-3 and other multifamily parking shall not be established in the required front yard setback or the front yard and side street setback on a corner lot.
- (i) Storm water requirements: Storm water may not be routed to the neighboring lot. Storm water requirements shall be in accordance with Section 109-1 except for single and two family dwellings.
- (j) Accessibility requirements: Accessibility requirements shall be the same as found in Chapter 11 of the International Building Code.
- (k) Landscaping and screening.
 - (i) Required to Provide: Each unenclosed hard surface parking facility over 6,000 square feet shall provide interior landscaped area equal to no less than five percent of the total paved area of the parking facility. All vision clearance shall be met according to section 24-171.
 - (ii) Drawing Submittal: A landscaping plan must be submitted with an off-street parking permit application for all hard surface lots. Such plan shall be drawn to scale, include the entire lot or tract and shall show ground covers such as seeded or sodded areas, shade trees, shrubs and any walls or fences. Such areas and facilities as loading docks, trash bins and outside storage yards shall be screened by such trees, shrubs and fences to the extent that the appearance of the premises from adjacent streets and property is attractive and pleasing. The purpose and intent of such landscaping is to provide shade and greenery, soften architectural lines, provide maximum absorption of surface water and present an attractive appearance. Large parking lots shall be divided down into sections as appropriate for the type and size of the development.
 - (iii) Appeal: The adequacy of the landscape plan shall be reviewed and determined by the building official and other city departments as appropriate. An applicant may appeal a denial of a landscape plan to the board of adjustment if feels that the denial is unreasonable and the board of adjustment shall have the final approval or denial authority. Compliance with the landscape and screening plan, as approved, is mandatory and any failure to carry out all details of said plan shall be deemed a violation of the building permit and inspection procedure.
 - (iv) Bordering Residential Neighborhoods: Any commercial or industrial district parking facility which abuts property in a residential district shall provide a fence, wall, landscape screen, or earth berm not less than four feet in height for the length of the common boundary. A grade change, terrace, or other site feature which blocks the sight line of headlights into a residential property may satisfy this requirement, subject to the determination of the building official.
 - (v) Landscaping maintenance. The property owner is responsible for maintenance and/or replacement of the landscaping according to the permitted landscape plan. Dead and dying plants shall be replaced by the owner. No buildings, storage of materials, or parking shall be permitted within the landscaped area, and the landscaped area shall be maintained and kept free of all debris, rubbish, weeds and tall grass.

December 1, 2015

- (l) Lighting: Lighting is required for all new off-street parking lots unless an exemption is given by the building official, and the purpose of the exemption be filed with the building permit.
- (i) Any lights used to illuminate the parking areas shall be so arranged to direct light away from any adjacent lots in a residential district.
- (ii) All lighting requirements will be based upon the National Electrical Code and the table as follows:

Open Parking Facilities						
General Parking and Pedestrian Area				Vehicle Use Area (only)		
Level of Activity	Lux (min. on pavement)	Footcandles (min. on pavement)	Uniformity Ratio (avg.:min.)	Lux (min. on pavement)	Footcandles (min. on pavement)	Uniformity Ratio (avg.:min.)
High	10	0.9	4:1	22	2	3:1
Medium	6	0.6	4:1	11	1	3:1
Low*	2	0.2	4:1	5	0.5	4:1

*This recommendation is based on the requirement to maintain security at any time in areas where there is a low level of nighttime activity.

Covered Parking Facilities					
Day			Night		
Areas	Lux (min. on pavement)	Footcandles (min. on pavement)	Lux (min. on pavement)	Footcandles (min. on pavement)	Uniformity Ratio (avg.:min.)
General parking and pedestrian areas	54	5	54	5	4:1
Ramps and corners	110	10	54	5	4:1
Entrance areas	540	50	54	5	4:1

- (m) Garbage collection in parking lots: If an alley is not available or large enough, space may be allocated in the parking lot for an adequate number of solid waste containers as determined by the city sanitation department. Such space shall not be located in the required front yard or side-yard setback areas, shall be free of any restraints from other utilities or parked vehicles, and must be accessible to

December 1, 2015

collection trucks. Parking stalls occupied by containers will not count towards the required minimum number of off street parking spaces. In the event the property is served by a commercial solid waste disposal firm, placement of the collection containers must be approved by the city. However, this is not intended to restrict the temporary placement of roll-out containers moved to the curb or alley for solid waste collection purposes.

(4) Exemptions:

- (a) All off-street parking lots in existence at the time of the passage of the ordinance from which this section is derived (Insert Date) shall be considered prior existing, nonconforming parking lots. These lots shall be allowed to remain provided the use of the facility for which they are intended does not change in zoning classification and they are maintained in good condition, free of all weeds, trash, other debris, and water pools or puddles.
- (b) Additional off-street parking stall required by expansion, modification, alteration or change of use shall meet the newly adopted standards.

SECTION 2. All ordinances or 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 published in pamphlet form, and shall be effective upon its passage and approval.

Roll call vote on the first reading of Ordinance No. 2795 with the following results:

Voting Aye: Korber-Gonzalez, Ycager, Seiler, Feldges.

Voting Nay: None.

Motion carried.

- A Public Hearing on the modification of the Alliance Municipal Code in regards to parking and/or storing of vehicles on public streets was the next discussion item. Ordinance No. 2796 which will approve the modification has been prepared for Council's consideration following the public hearing. Council was provided with the following background information:

[Staff has prepared revisions to Section 26-137 of the City of Alliance Municipal Code. The goal in revising the Code is to address vision and safety issues that have surfaced after the implementation of the Code allowing trailers and RV's the ability to park and be stored on City streets from May 1st to November 1st.

The Alliance Police Department has requested that a change in Code be implemented, making the parking and storage of such vehicles on City streets more restrictive. The proposed language will have no restrictions on trailers less than five feet in height. Trailers over five feet in height would be limited to a 24-

December 1, 2015

hour time period to get the vehicle ready for travel. The width of trailers is governed by a different section that deals with obstructions in the right of way.

Staff asked the Planning Commission for ideas to accommodate contractors who do not store their trailers on the street but rather park them at a site for the duration of a job. Staff recommended that as long as a valid building permit was issued for the property, the trailer would be allowed as long as it did not conflict with any vision or driveway clearance requirements. They did not offer suggestions for contractors who do not require building permits for their type of work such as cabinetry, gutters, windows, or siding jobs. Staff researched other communities parking codes and found that some choose to use parking permits that are issued by the City and placed on the trailer in a conspicuous spot.

The City of Alliance Planning Commission had a discussion about the existing Code at their regular meeting on October 13, 2015 and made recommendations to staff. They then held a Public Hearing at their regular meeting on November 10, 2015 wherein they voted to recommend the Alliance City Council approve the ordinance accepting the proposed changes to Section 26-137 of the City of Alliance Municipal Code.]

Mayor Yeager stated “now is the date, time, and place to conduct a Public Hearing to hear support, opposition, criticism, suggestions, or observations of the taxpayers relating to the parking and/or storing of vehicles on public streets and opened the public hearing at 7:22 p.m.

Community Development Director Brent Kusek reviewed the proposed changes to the Alliance Municipal Code.

Dana Bentley, 1041 Duncan Avenue, was in attendance to speak to the parking of vehicles, trailers, watercrafts, campers, etc. on the street. He stated where he lives on Duncan Avenue, it is so congested with trailers, boats, campers, and unlicensed vehicles, that it has become a one lane street that is difficult for even one vehicle to make it through. He stated to Council that the trash truck does not have access to the roll out trash receptacles and it unable to dump trash. He also stated that he believes that the parking of all vehicles, no matter the size, should not be permitted on the street.

Hearing no further testimony, the Public Hearing closed at 7:29 p.m.

A motion was made by Mayor Yeager, seconded by Councilman Korber-Gonzalez to approve the first reading of Ordinance No. 2796 which Acting Clerk Krejci read by title and follows in its entirety.

ORDINANCE NO. 2796

AN ORDINANCE OF THE CITY OF ALLIANCE, NEBRASKA, AMENDING THE MUNICIPAL CODE BY MODIFYING SECTION 26-137 DEALING WITH PARKING AND/OR STORING OF VEHICLES PROHIBITED, REPEALING PRIOR PROVISIONS OF

December 1, 2015

THE MUNICIPAL CODE WHICH ARE INCONSISTENT WITH THIS ORDINANCE, AND PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1. The Alliance Municipal Code at Section 26-137 shall be amended as follows:

Sec. 26-137. Parking and/or storing of vehicles prohibited.

The parking or storing of any trailer, utility trailer, recreational vehicle, camper, travel trailer, boat, personal water craft, trailered barbecues, and all other similar appurtenances intended to be attached to a vehicle, more than five feet (5') in height, shall be prohibited on any city street for a period of more than 24 hours except as otherwise limited by or provided for in this code. Provided any trailers used by contractors with either the issuance of a building permit or a parking permit shall be allowed as long as the permit remains in place and the location does not interfere with required driveway and vision requirements.

SECTION 2. All ordinances or 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 approval, passage, and publication according to law.

A motion was made by Councilman Seiler to remove the language in the ordinance that states, "more than five feet (5') in height." The motion was seconded by Councilman Korber-Gonzales.

Roll call vote on the first reading of amended Ordinance No. 2796 with the following results:

Voting Aye: Korber-Gonzalez, Yeager, Seiler, Feldges.

Voting Nay: None.

Motion carried.

- The next agenda item was the first reading of Ordinance No. 2797 which will amend the Alliance Municipal Code to include franchise regulations for cable television systems. Council was provided with the following background information:

[For many years, the City of Alliance has had one sole provider of cable television services with Charter Communications, Inc. (or its predecessor). The previous Code was not clearly accommodating for multiple franchisees, but instead, was crafted primarily for a single provider. With the modified Code,

December 1, 2015

multiple companies that meet the provisions and are approved by City Council, can be franchisees and would therefore all have the same rules. Additionally, these provisions have been assembled based upon what has been accepted by all parties in other nearby Nebraska cities. The provisions therefore are fair and reasonable and little grounds for another firm to use.

Further, on July 15 of this year, the City received a formal letter of application from a second provider, Allo Communications of Imperial, Nebraska. In addition, for some time, staff has been exploring possibilities of upgrades of the system for broadcasting City Council meetings to the public. With this increased competition, so too comes the prospect of fiber service being delivered to the doorstep of every home in Alliance. This would represent a very positive and progressive step in advanced technology in our community as it would not only necessarily be cable television, but would also include the possibility of high speed, broadband data and internet. There are even very real potential economic benefits to Alliance – especially, as it further expands the possibility of individuals being able to work from home.

With that, staff has been working with Attorney Rick Ediger on amending the City's Code to include cable franchise authority that would accommodate these changes and to craft a franchise agreement that would be acceptable to all parties and still provide the same level of protection to the Alliance consumer.

Model franchise agreements have been sent to both Charter and Allo for their consideration. In doing so, we hope to receive signed franchise agreements from Charter and Allo in time for them to be considered along with the third reading of the Ordinance on January 5. In this way, they can be in effect starting in early January 2016.

ADDITIONAL BACKGROUND

On September 1, 2015, City Council approved Resolution 15-73, which extended the Charter Franchise Agreement through the end of the year.

One July 15, 2015, the City received a letter application from Allo Communications for a Cable Television Franchise in Alliance.

On February 3, 2015, City Council passed Resolution 15-09, which approved an Amendment to the Allo License and Agreement and clarified the number of poles and the appropriate rental billing.

On October 7, 2014, City Council passed Resolution 14-112, which authorized an internal franchise name transfer following a name change by Charter.

December 1, 2015

On February 15, 2007, City Council approved and executed a ten-year license and agreement with Allo Communications (Allo) on February 15, 2007 that provided Allo the rights to build a fiber optic system in the City of Alliance attached to the City's power poles and, if warranted, underground in the City's right-of-ways. The agreed upon fees for this license are \$200 per month paid quarterly plus \$5.25 pole rental to be paid annually.]

A motion was made by Councilman Seiler, seconded by Councilman Feldges to approve the first reading of Ordinance No. 2797 which Acting Clerk Krejci read by title and follows in its entirety.

ORDINANCE NO. 2797

AN ORDINANCE OF THE CITY OF ALLIANCE, NEBRASKA, AMENDING THE MUNICIPAL CODE BY ADDING CHAPTER 18, ARTICLE XI, DEALING WITH CABLE TELEVISION SYSTEMS AND THE ISSUANCE OF FRANCHISES TO OPERATORS OF CABLE TELEVISION SYSTEMS, ALLOWING FOR THE USE OF RIGHTS-OF-WAY FOR CABLE TELEVISION SYSTEMS, REPEALING PRIOR PROVISIONS OF THE MUNICIPAL CODE WHICH ARE INCONSISTENT WITH THIS ORDINANCE, PROVIDING FOR PUBLICATION IN PAMPHLET FORM AND PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1. Chapter 18 of the Alliance Municipal Code is amended by adding a new Article XI – Cable Television, as follows:

18-501. Purpose.

The purpose of this Article is to:

- (a) establish a local policy concerning cable television;
- (b) establish Franchise procedures and standards which encourage the growth and development of Cable Systems which assure that Cable Systems are responsive to the needs and interests of the City;
- (c) establish guidelines for the exercise of local authority with respect to the regulation of Cable Systems;
- (d) establish an orderly process for Franchise renewal which protects Cable Operators against unfair denials of renewal where an Operator's past performance and proposal for future performance meet the standards set by the FCC and this Article;

December 1, 2015

- (e) promote competition in cable communications and minimize unnecessary regulations that would impose undue burdens on Cable Systems;
- (f) create a set of regulations, standards and procedures for Cable Operators;
- (g) create a comprehensive customer service and consumer protection policy for Cable Operators;
- (h) provide for access and inspection of a Cable Operator's books and records in order to monitor compliance with local, State and Federal laws, and any franchise agreement;
- (i) provide a construction and installation policy for a Cable Operator's system;
- (j) provide for the health, safety and welfare of the citizens of the City in light of the Cable Operator's construction, operation and maintenance;
- (k) provide for emergency override capability, so that citizens of the City may be warned of a potential, imminent, or actual Emergency situation that exists in the area;
- (l) create a procedure for collecting and monitoring Franchise Fees; and
- (m) create a default and revocation procedure for Cable Operators.

18-502. Definitions.

As used in this Article or in any Franchise issued pursuant to this Article, the following terms shall have the following definitions:

- (a) "Affiliate" means another person or entity who owns or controls, is owned or controlled by, or is under common ownership or control with, the person or Entity.
- (b) "Applicant" means a person or Entity submitting an application or proposal to the City for a Franchise to operate a Cable System under the terms and conditions of this Article and any State or Federal regulations.
- (c) "Auxiliary Equipment" means equipment supplied by a Cable Operator which enhances or assists in the reception or provision of Cable Service.
- (d) "Basic Cable Service" means any Service Tier which includes the retransmission of local television broadcast signals, the PEG Channels, and any other signals required by Federal Law or the FCC.
- (e) "Cable Act" means the Cable Communications Policy Act of 1982, codified as 47 U.S.C. '521 et seq., or corresponding legislation in any future Federal communications legislation.

December 1, 2015

(f) Except as otherwise provided for in this Article, "Cable Operator" means any person or Entity which:

- (1) provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in that Cable System; or
- (2) otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System.

(g) Unless otherwise defined in the Cable Act, "Cable Service" means:

- (1) the one-way transmission to Subscribers of Video Programming or Other Programming Service; and
- (2) Subscriber interaction, if any, which is required for the selection or use of Video Programming or Other Programming Service.

(h) "Cable System" means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming, and which is provided to multiple Subscribers within the City; provided, however, this shall not include:

- (1) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations;
- (2) a facility that serves Subscribers without using any Public Way;
- (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Cable Act, except that the facility shall be considered a Cable System to the extent the facility is used in the transmission of video programming directly to Subscribers;
- (4) any facilities of any electric utility used solely for operating its electric utility systems; or
- (5) any system exempted under the Cable Act.

(i) "Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel (as defined by the FCC); provided, however, if the definition of Channel is modified by Federal law or the FCC, then such revised definition shall apply.

(j) "Charge" means a one-time or non-regularly occurring cost paid by the Subscriber, and which is associated with the installation, maintenance, service or repair of the Cable Service.