

November 21, 2013

**ALLIANCE CITY COUNCIL**

REGULAR MEETING, THURSDAY, NOVEMBER 21, 2013

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

The Alliance City Council met in a Regular Meeting, November 21, 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 14, 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 November 21, 2013 Regular Meeting of the Alliance, Nebraska City Council at 7:00 p.m. Present were Mayor Feldges, Council Members Benzal, 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 Benzal made a motion, which was seconded by Councilman Lewis to approve the Consent Calendar as follows:

**CONSENT CALENDAR – NOVEMBER 21, 2013**

1. Approval: Minutes of the Regular Meeting, November 7, 2013.
2. Approval: Payroll and Employer Taxes for the period October 26, 2013 through November 8, 2013 inclusive: \$164,975.96 and \$11,595.54 respectively.
3. Approval: Claims against the following funds for the period October 31, 2013 through November 14, 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; \$1,395,345.45.

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4. Approval: Request of the Alliance Chamber of Commerce to conduct the Annual Christmas Parade on Saturday, December 7, 2013 at 1:00 p.m. The parade will line-up at 10<sup>th</sup> Street and Box Butte Avenue beginning at 12:15 p.m. and proceed south to 4<sup>th</sup> Street and then turn east. The actual street closure will be 3<sup>rd</sup> to 10<sup>th</sup> Streets on Box Butte Avenue.

5. Approval: Issuance of the following contractor licenses:

General Contractor	Doug Cullan dba Cullan Supply Contractors
Master Plumber/Gas Fitter	Brett Kaltredt dba Midwestern Mechanical

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. Trash Truck is down (engine & body warranty – waiting on parts)
  2. Streetscape Phase 1 Update – Remains on schedule
    - A. East Side-
      - Northern portion – all torn out
      - Middle portion–concrete pouring
      - Southern to Middle portion – nearing completion – 3 Lights are now in!
    - B. West Side-Complete
    - C. Change Order – Small Net Add on Tonight's agenda
  3. Streetscape Phase 2 Update – Schedule is still in works
    - A. Working with Scottsbluff re: Responsible Charge
      - CM taking to Council recommendation through Final Design Process
    - B. Other possible option for construction
  4. Charter Cable System Agreement Upgrade Request Update – Charter has responded
  5. Senior Center:
    - A. Seniors Requested City maintain building (& windows);
    - B. Inquired about other items, utilities & snow removal \*Seniors don't have equipment)
  6. Service Excellence – Working on transition to all facilitating in-house
  7. Remodel of Utility Office – will be moving to former Community Dev office - next year
- The next matter before Council was the first reading of Ordinance No. 2728 which will allow wireless telecommunication facilities in all zoning districts with a Conditional Use Permit. Council was provided with the following background information:

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[PROPOSAL: Viaero Wireless made application to the City to amend the zoning regulations to allow wireless telecommunications facilities (WCF) in all zoning districts. This ordinance was originally presented to Council at the June 13, 2013 Council meeting and was allowed to die for lack of a second. A follow-up discussion occurred at the September 17, 2013 Council meeting. A Viaero representative will be on hand to answer questions for the Council.

ANALYSIS: The Viaero letter of request, with attachments, combined with a memo sent to the Scottsbluff Planning Commission in regards to their April 8 hearing on the matter should provide a good background for the exact request and reasoning. The primary issue involves access to service and access to service providers in residential districts.

The Planning Commission heard and continued the matter at their April 16 hearing, primarily to provide the opportunity to obtain additional public input. A special invite for public comment was posted on the City website and on the City Facebook page. Two comments have been received. One was all for the concept to enhance services. The other suggested that the City build a tower and rent the space.

Currently, the Code allows WCFs in Exclusive Agricultural, Rural Residential and all Commercial Districts as a conditional use. WCFs are an allowed use in M-1 Light Industrial and M-2 Heavy Industrial Districts, but limited to a height of 100 feet with a setback requirement that equals the height of the tower. In M-3 Railroad Industrial towers are not specifically listed as an allowed use, but may be permitted as a conditional use. Taller towers or lesser setbacks may be considered and allowed in all Industrial Districts, similar to the conditional use permitting of the Viaero tower in a Commercial District on 3<sup>rd</sup> Street, which exceeds 100 feet in height and has a significantly lesser setback than the height.

All of the City's residential zones already allow building, structures and premises for public utility services as a conditional use. As WCFs are functionally equivalent to a public utility service, though not legally the same, it seems to be a small step to allow these facilities via the same process. This proposal would limit towers in Residential zoning districts to 75 feet, with exceptions.

This proposal would be to leave the existing WCF uses in most districts as is and specifically add that they may be permitted as a conditional use in all Residential Districts. The proposal would require that facilities already permitted in the Code be held to the same higher standard.

FEEDBACK: The public response has been minimal, with no objections. The only concern raised by other City Departments has been incorporated into the proposed ordinance. The City Manager did hear from former Councilman Dan Kusek, who remembered a lot of negative feedback from the public after the former tall towers went up. During that discussion both Kusek and the City

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Manager thought perhaps the best way to go would be to require the towers be camouflaged to look like either a pine tree, or a church steeple, or some other nearby object or structure.

**PLANNING COMMISSION RECOMMENDATION:**

The Planning Commission met on May 28 to conduct a public hearing and to consider the matter. After hearing the testimony, the Planning Commission voted unanimously to recommend approval of the request to amend the ordinance as presented.

**FINDINGS OF FACT:**

- 1) There is a need for high-capacity service in residential areas;
- 2) All sites in residential areas will require a special review for a Conditional Use Permit;
- 3) Consideration has been given to lessen potential incompatibility;
- 4) There have been no objections raised from the public;
- 5) Input from the public was solicited on the City website and Facebook page;
- 6) All of our residential zones allow building, structures and premises for public utility services as a Conditional Use and WCFs are functionally equivalent to a public utility service;
- 7) This ordinance amendment will bring the existing portions of the Code where WCFs are allowed to the same higher standards]

A motion was made by Councilman Benzel, seconded by Councilman Lewis to approve the first reading of Ordinance No. 2728. City Clerk Jines read the Ordinance by title which follows in its entirety:

**ORDINANCE NO. 2728**

**AN ORDINANCE OF THE CITY OF ALLIANCE, NEBRASKA PERTAINING TO WIRELESS COMMUNICATION FACILITIES AND AMENDING CHAPTER 109 MISCELLANEOUS RESTRICTIONS, ARTICLE II COMMUNICATIONS ANTENNAS OF THE CODE OF ORDINANCES OF THE CITY OF ALLIANCE, NEBRASKA TO ADD SECTIONS 109-36 THROUGH 109-38 RELATING TO WIRELESS COMMUNICATION FACILITIES, 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 CITY COUNCIL OF THE CITY OF ALLIANCE, NEBRASKA:**

SECTION 1. Chapter 109, Article II of the Code of Ordinances of the City of Alliance, Nebraska is hereby amended to read as follows:

“Sec. 109-36. Wireless Communications Facilities; Intent and Purposes.

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The purpose of the Wireless Communications Facilities (WCF) regulations is to encourage and promote wireless communications coverage for all areas of the City while minimizing the visual, environmental and neighborhood impacts. The goals include providing personal wireless services throughout the City quickly, effectively and efficiently while ensuring that basic matters such as FAA, FCC and Airport Zoning requirements are met as well as addressing security, decommissioning and preferred locations.

More preferred locations include commercial, industrial and agricultural areas and less preferred locations include residential areas. More preferred locations in residential areas include public lands, proximity to existing overhead utility corridors and proximity or attachment to existing structures that might assist with screening.

All WCF shall be constructed and administrated according to the terms of this Article.

#### Sec. 109-37. Definitions.

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.

*Antenna(s)* means any exterior device designed and intended for telephonic, radio, data, internet or television communications through the sending and/or receiving of electromagnetic waves. For purposes of this Article the term "antenna" shall not include an antenna used by an amateur radio operator nor an antenna or satellite dish used for the private or non-commercial reception of television or radio signals as referred to in Sec. 109-21 of this Code.

*Antenna Height* means the vertical distance from natural grade to the top of all appurtenances.

*Antenna Support Structure* means any building or structure other than a tower which can be used for location of telecommunications facilities.

*FAA* means the Federal Aviation Administration.

*FCC* means the Federal Communications Commission.

*PWS* means Personal Wireless Service Provider, which means a personal wireless service facility owner, operator, lessee or any officer or employee thereof *Towers* means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers or monopole towers.

*Utility Sublot* means a lot that may be smaller than the minimum allowed in a District or otherwise out of standard compliance. A Utility Sublot must have legal vehicular access. Water may be allowed for property maintenance, but there shall be no sewer service allowed.

*WCF* means Wireless Telecommunications Facility.

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*WCF Site* means a tract or parcel of land that contains the personal wireless service facilities including any antenna, support structure, accessory building and parking, and may include other uses associated with and ancillary to personal wireless services.

**Sec. 109-38. Zoning.**

(a) Antennas in all Residential Zoning Districts, except RR-Rural Residential, shall be a conditionally permitted use by special review only. Antennas in all other Zoning Districts, including RR-Rural Residential, may be allowed by administrative review when attached to existing structure, including roof-tops, building faces, water tower or existing utility structure provided the Antenna does not exceed 12 feet in height above the existing structure and blends in with said structure.

(b) This Article recognizes two types of Towers associated with PWS: those up to 75 feet in height, which are constructed primarily for local distribution and reception of wireless signals; and those greater than 75 feet in height, which are constructed primarily for the concentration and transmission of signals to and from other Towers, and which are now excepted from the Supplemental Regulations found in Article VI Sec. 115-170 of this Code.

(c) Towers of any height shall be a conditionally permitted use by special review only in A Exclusive Agricultural, RR Rural Residential and all Commercial and Industrial Districts, and shall not be a permitted use or allowed in any other Residential Districts.

(d) Except as noted in Sec. 109-38 (b) and 109-38 (c), Towers over 75 feet in height shall not be affected by the sections set forth in this Article.

(e) Towers no greater than 75 feet in height shall be a conditionally permitted use by special review in all A-Exclusive Agricultural District, RR-Rural Residential District and all Commercial and Industrial Districts, except where current zoning permits towers as a use by right, but shall not be allowed in any other Residential District. However, allowances may be made to Towers exceeding 75 feet in height if such Towers must be extended due to local circumstances or to accommodate co-location by other service providers. The following conditions shall apply to Towers in this Article.

1. Applications for Conditional Use Permits (“CUP”) shall include the following: The legal description of the parcel upon which the PWS facilities are to be located; a survey of the parcel by a licensed surveyor; a scaled site plan clearly indicating the location, type and height of proposed tower; adjacent land uses and zoning; adjacent roadways and proposed means of access. The site plan shall indicate the antenna, antenna support structure, building, fencing, buffering and all other items required in this Article.
2. There are more preferred areas for Towers and less preferred areas for Towers. More preferred areas include; parks, public lands, proximity to existing overhead utility corridors and proximity to what might be termed “shadow” structures, such as churches,

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schools and public facilities, especially those that are multi-story. Less preferred areas might include subdivisions that are wholly served by underground utilities.

3. Towers, where possible, shall be constructed on existing utility easement and rights-of-ways, subject to existing utility restrictions, such as areas where underground utilities are required.
4. Towers may be constructed on private land; as a permanent easement, as a land rental arrangement or on a lot owned by the PWS. Creation of a Utility Sublot will not be subject to minimum lot size as set forth in Chapter 113 of the City Code, but will be subject to access requirements and no water service.
5. Required setbacks will be determined on individual site bases through review of each CUP. Collapsible tower design may be required in certain instances.
6. Towers may be built on municipal land subject to the CUP process and subject to such legal and administrative contracts as deemed appropriate and necessary.
7. Towers may be required to blend in and enhance compatibility with adjacent land uses as reasonably feasible.
8. Towers must be enclosed and secured by a chain-link fence or equivalent, of a minimum of six feet in height, however an appropriate privacy-type fence may be required to improve compatibility in residential neighborhoods. Anti-climb protection must be installed to prevent, to the extent possible, unauthorized access. The security fence must enclose all components of the site, including footings, guy wires (if present), cabinets, equipment building and back-up generator. No property line setbacks are automatically required for such Towers, however, the security fence enclosure must be adequate for the safe access and maintenance of the Tower and its equipment.
9. PWS must provide evidence that proposed Towers have met all applicable regulations, including local Airport Zoning, the FAA and the FCC prior to construction and be Compliant with E-911 Public Safety Access Point. PWS must also submit an airport obstruction evaluation/airport airspace analysis (FAA Form 7460-1) aeronautical study to FAA for determination of Tower obstruction to aviation operations. An FAA approved airspace analysis report shall be submitted to the zoning administrator prior to any Tower construction commencing.
10. No PWS shall act to exclude any other PWS from using the same facility, building, structure or location. PWSs shall cooperate in good faith to achieve co-location of facilities and equipment with other PWSs.11. Upon request by the City, a PWS shall provide evidence why co-location is not feasible.
12. Any Tower approved in this Article must be maintained in a manner consistent with generally accepted industry practices. A Tower may be inspected at any time, subject to

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approved access by the PWS, to insure the safety of the general public. Any deficiencies in structure or operation shall be promptly remedied.

13. The property shall be maintained in a reasonable manner and be kept weed free; options can include rock, mulch, landscaping and maintenance or any combination thereof.
14. A PWS or its successors or assigns shall promptly remove a Tower and return a Tower site to its pre-construction conditions, should a Tower be decommissioned or otherwise deemed unnecessary or unusable.”

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.

Roll call vote on Ordinance No. 2728 with the following results:

Voting Aye: Feldges.

Voting Nay: Seiler, Benzel, Lewis, Yeager.

Motion failed.

- The first 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 unkempt when the vegetation reaches eight inches in height. Given additional time is required for enforcement action following any citation; it is recommended that the height allowed by City Code be reduced from twelve inches to eight inches.]

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

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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.

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

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

Voting Nay: None.

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Motion carried.

- The next agenda item was the first 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, 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.

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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 first 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;
- (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;

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- (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:

- (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

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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.

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

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

Voting Nay: None.

Motion carried.

- The next item for discussion was the first reading of Ordinance No. 2746 which will adopt the City Council's 2014 Meeting Calendar. Council was provided with the following background information:

[Council has previously established its meeting calendar as 7:00 p.m. at the Board of Education Meeting Room on the first and third Thursdays of each month. This past year, there was some discussion regarding changing the times of the meetings for the coming year. It has been suggested that the meetings be scheduled on the first and third Tuesdays of each month. One potential conflict exists with the

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second meeting in September falling during the annual ICMA conference. The alternative included on the attached calendar is the third Thursday in September.

Staff would also like Council to consider establishing a Special Meeting for the end of our fiscal year for final bill approval and would recommend Tuesday, September 30<sup>th</sup>. This has traditionally been a very short meeting in the morning hours to allow the Finance Department to complete year-end payments.

Although set forth by ordinance, Council may alter the established time and date that is to its members' convenience. Should Council wish to make any further changes, amendments may be made to the ordinance.]

A motion was made by Councilman Seiler, seconded by Councilman Benzel to approve the first reading of Ordinance No. 2746. City Clerk Jines read the Ordinance by title which follows in its entirety:

ORDINANCE NO. 2746

AN ORDINANCE ESTABLISHING THE TIME AND PLACE OF REGULAR COUNCIL MEETINGS FOR THE CALENDAR YEAR 2014 AND AMENDING SECTION 2-25 CITY COUNCIL MEETING, REGULAR; 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. Nebraska Statutes at Section 19-615 provide that ". . . the Council shall meet at such time and place as it may prescribe by ordinance, but not less frequently than twice each month in cities of the first class."

SECTION 2. Section 2-25 of the Code of Ordinances of the City of Alliance, Nebraska is hereby amended to read as follows:

"Sec. 2-25. City council meeting; regular.

(a) *Time*. The city council shall hold its regular meeting on the first and third Tuesday of each month. The city council may, by adoption of a calendar each year, establish regular meeting dates other than the first and third Tuesday of each month. The city council may, by resolution adopted not less than one week prior thereto, change its regular time of meeting. If the day fixed for any regular meeting of the council falls upon a day designated by law as a legal or national holiday, such alternate meeting shall be set by agreement of the councilmembers.

(b) *Place*. Regular meetings of the council shall be held in the board of education meeting room located at 1604 Sweetwater Avenue; provided, that the city council may adjourn any meeting to such other place as it may deem necessary, desirable or convenient for the holding of its session; provided, further, that if such meeting is adjourned to some other place, notice of

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the place of the meeting being held shall be affixed to the door of the board of education meeting room.”

SECTION 3. Attached hereto is a "proposed 2014 calendar," which is incorporated herein by reference as if fully set forth.

SECTION 4. The City Council of Alliance, Nebraska shall conduct regular meetings during calendar year 2014 on the dates that are indicated on the attached proposed 2014 calendar at the hour of 7:00 o'clock P.M. at the Board of Education Room, 1604 Sweetwater Avenue, Alliance, Nebraska. The time and place of these meetings may be changed from time to time as provided by law.

SECTION 5. 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 6. This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

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, Seiler, Yeager, Feldges.

Voting Nay: None.

Motion carried.

Roll call vote on the final reading of Ordinance No. 2746 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 it published.

- The second 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:

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[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.
- 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.]

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A motion was made by Councilman Benzel, seconded by Councilman Yeager to approve the second 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.

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 \_\_\_\_ day of \_\_\_\_\_, 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.

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.

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Roll call vote to waive the statutory rule requiring Ordinance No. 2744 be read on three separate dates.

Voting Aye: Benzel, Lewis, Feldges.

Voting Nay: Seiler, Yeager.

Motion failed.

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

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

Voting Nay: None.

Motion carried.

- The second reading of Ordinance No. 2745 was the next item for Council's review. Ordinance No. 2745 will approve the Preliminary Plat and Final Plat requests of Dan Dickinson to subdivide property identified as the Southwest Quarter of Section 35, Township 25 North, Range 48, West of the 6<sup>th</sup> P.M., Box Butte County, encompassing 5.68 acres more or less. Council was provided with the following background information:

[Mr. Dan Dickinson of Syndicate Block Company is requesting approval of a Preliminary Plat and a Final Plat to subdivide property. The property to be platted is located north of Holsten Drive, east of Highway 385, south of a gas station/convenience store at 1639 West Third Street otherwise known as Terry's, and west of a vacant field which are unplatted lands of Syndicate Block Company. The legal description of the property is known as part of the Southwest Quarter of Section 35, Township 25 North, Range 48, West of the Sixth Principal Meridian, Box Butte County, encompassing 5.68 acres more or less.

The land is currently zoned C-3 (Highway Commercial.) The land is bordered to the north, east and south by C-3 zoning. The current zoning is not being asked to change. There currently are no structures existing on the property.

The Preliminary Plat was reviewed by City Staff, as required by Section 113-68 of the Municipal Code, as well as the Fire Chief and Police Chief. The Preliminary Plat meets the requirements and guidelines in the Municipal Code Section 113.70. City Staff did not deem it necessary to request any additional information than was already provided on the Preliminary or Final Plats. Public works elements are detailed in the attached documents.

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Notice petitions were sent out to property owners within a 300' radius of the subject property. Four petitions were mailed out and one was returned, which was in favor of the plat.

Mike Hulquist of the Alliance Municipal Water/Sewer Department commented that there is water main on the west and south sides of the proposed platted property that will require an assessment fee of \$14.44 per front linear footage plus the tap fee based upon service size. There is also sanitary sewer access at the southeast end of the property.

The Final Plat was reviewed as required by Section 113-104 of the Municipal Code by City Staff. This was done using the criteria listed in Section 113-114 of the Municipal Code. City Staff did not find it necessary to ask for more information. All information was present on the Final Plat with the exception of the zoning designation.

The Planning Commission unanimously approved the Staff recommendation at its October 8 meeting for the approval of the Final Plat of Block 10, Syndicate Addition to the City of Alliance with the provision that the waiving of the requirement of zoning information being present on the Final Plat and waiving of the requirement for storm sewer infrastructure until the property is developed.]

A motion was made by Councilman Lewis, seconded by Councilman Benzel to approve the second reading of Ordinance No. 2745. City Clerk Jines read the Ordinance by title which follows in its entirety:

#### ORDINANCE NO. 2745

AN ORDINANCE APPROVING THE PRELIMINARY AND FINAL PLATS OF SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 25 NORTH, RANGE 48, WEST OF THE SIXTH PRINCIPAL MERIDIAN, BOX BUTTE COUNTY, ENCOMPASSING 5.68 ACRES MORE OR LESS.

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 and Final Plat of Southwest Quarter of Section 35, Township 25 North, Range 48, West of the Sixth Principal Meridian, Box Butte County, Nebraska from Dan Dickinson of Syndicate Block Company.

SECTION 2. The Planning Commission held a public hearing October 8, 2013, and has recommended the approval of the Preliminary Plat.

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SECTION 3. The Planning Commission met on October 8, 2013 and conducted a Public Hearing on the Final Plat of Southwest Quarter of Section 35, Township 25 North, Range 48, West of the Sixth Principal Meridian, Box Butte County, Nebraska

SECTION 4. The Preliminary Plat and the Final Plat of Southwest Quarter of Section 35, Township 25 North, Range 48, West of the Sixth Principal Meridian, Box Butte County, Nebraska are hereby approved by the City of Alliance and shall be filed with the County Clerk as provided by City Code and State law within 30 days of this approval. The plat map which has been prepared is a part of these proceedings and is attached hereto and is incorporated herein and made a part hereof by reference.

SECTION 5. 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 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. 2745 be read on three separate dates.

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

Voting Nay: None.

Motion carried.

Roll call vote on the final reading of Ordinance No. 2745 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 it published.

- Resolution No. 13-107 approving Change Order Nos. 1 and 2 to the Contract with K.L. Wood and Company for Phase I of the Streetscape Project was the next matter before Council for consideration. Council was provided with the following background information:

[Council approved Resolution 13-64 on June 13, 2013 awarding the bid for the Phase I of the Streetscape project to K.L. Wood and Company of Alliance, NE in the amount of \$485,741.00 for all of Schedule A and Schedule B of the bid

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project. Phase I of the project was then adjusted to include only the south side of Third Street (a portion of Schedule B).

The original contract was let at \$445,827.35 and subsequently decreased by \$2,021.20 for a calculation correction in the Schedule B portion, for a net of \$443,806.15. Completion of Phase I was contracted for no later than December 1, 2013. A small change order is being requested for the project to account for the unforeseen circumstances and weather delays. Following is a summary of the requested changes with more details attached:

Description	Order	Type	Amount
Removal and disposal of additional concrete, north side of Bank of West	#1	Add	\$4,656.00
LED manufacturer provided an improved LED light fixture	#1	Deduct	(\$8,000.00)
Removal and disposal of additional concrete, west side of Players Bar	#2	Add	\$400.00
Fill in door entering vault in preparation for fill, west side of Players Bar	#2	Add	\$900.00
Cost for filling vault, west side of Players Bar	#2	Add	\$1,662.50
Additional electric circuit for irrigation timer	#2	Add	\$683.25

Net Effect:

Previously approved Contract	\$443,806.15
Change Order #1 (dated 10/18/13)	\$ (3,344.00)
Change Order #2 (dated 11/07/13)	<u>\$ 3,645.75</u>
New Contract Amount:	\$444,107.90

As shown above, the net addition to the contract is \$301.75 for a revised total of \$444,107.90. An addition of 15 days is being requested as a result of rain delays and additional time required for heating system removal around Bank of the West; vault removal in front of Players Bar and some water service replacements. The additional time would extend the contract by only two weeks to December 15, 2013.]

A motion was made by Councilman Benzel, seconded by Councilman Seiler to approve Resolution No. 13-107, which follows in its entirety:

#### RESOLUTION NO. 13-107

*WHEREAS*, The City of Alliance solicited bids for the construction of street lighting, concrete sidewalks and curb and gutter for the Box Butte Avenue Historical Lighting and Site Improvements of the Streetscape Project; and

*WHEREAS*, The City of Alliance awarded the bid to K. L. Wood and Company of Alliance, NE for this project which included four Schedules: A-D:

*WHEREAS*, Phase I of the project included Schedule A and a portion of Schedule B in the amount of \$443,806.15; and

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*WHEREAS*, The City of Alliance is in receipt of Changer Order No. 1 dated October 18, 2013 and Change Order No. 2 dated November 7, 2013 which documents changes with the project, which have occurred following the contract award.

*NOW, THEREFORE, BE IT RESOLVED* by the Mayor and Council of the City of Alliance, Nebraska, that Change Order Nos. 1 and 2 for Phase 1 of the Box Butte Avenue Historical Lighting Project be approved which reflects a \$301.75 increase at this time and a two week completion date extension due to weather delays and unforeseen construction circumstances altering the completion date to December 15, 2013.

A motion was made by Councilman Benzel to postpone the passage of Resolution No. 13-107 until the December 5, 2013 Council Meeting. Motion was withdrawn.

Roll call vote on Resolution No. 13-107 with the following results:

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

Voting Nay: None.

Motion carried.

- Council next reviewed Resolution No. 13-111 which will approve \$15,000 from the City Council Contingency Fund to be paid to Box Butte Development Corporation for the NIFA Housing Study Grant. Council was provided with the following background information:

[The most recent housing study for the City of Alliance is dated 2007 with quite a few changes occurring over the years since then. Box Butte Development Corporation (BBDC) Executive Director Chelsie Herian has been in contact with Tim Keelan of Hanna:Keelan Associates, P.C. of Lincoln, NE in regard to a comprehensive community housing study. The items included in the study include a Housing Profile, Market Demand, Land Use and Site Analysis, Identification of Funding Sources and Pre-Development Consulting Services. The scope of work, timeline and estimated costs are attached.

Estimated costs for the full proposed study are \$30,000. It has been requested by BBDC that the City Council approve that the City of Alliance provide the 50% match funding (\$15,000) for a NIFA Housing Study Grant.

Hanna:Keelan Associates, P.C. was founded in 1978 and is owned and operated as a professional corporation by Becky Hanna and Tim Keelan. Both Hanna and Keelan have Masters of Community and Regional Planning Degrees from the University of Nebraska-Lincoln, a professional American Planning Association accredited degree program. Since its inception, Hanna:Keelan has been involved in over 700 major planning projects in 15 states. In 2004, Hanna:Keelan Associates was inducted into the NEBRASKA HOUSING HALL OF FAME by the Nebraska Investment Finance Authority.

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The budget authority is not presently included in the current 2013-14 budget to accommodate the request. It is recommended that Council approve use of \$15,000 of Council Contingency (GL #01-10-10-47-791) with actual funds provided from sales tax revenues that would be redirected from the General Fund to the Economic Development Fund. (Note: Only \$170,000 of the \$200,000 annual sales tax cap was allocated for economic development for the current fiscal year allowing for the adjustment.) Actual payment would be authorized from Contracted Services – Grant Eligible (GL #35-61-64-44-493) account in the Economic Development Fund.]

A motion was made by Councilman Benzel, seconded by Councilman Lewis to approve Resolution No. 13-111, which follows in its entirety:

RESOLUTION NO. 13-111

*WHEREAS*, The Box Butte Development Corporation is applying for a Nebraska Investment Finance Authority (NIFA) Housing Study Grant in the amount of \$30,000; and

*WHEREAS*, The last housing study was conducted in 2007 and needs to be updated; and

*WHEREAS*, The Box Butte Development Corporation is requesting 50% financial participation from the City of Alliance for the Housing Study Grant in the amount of \$15,000; and

*WHEREAS*, Box Butte Development Corporation will be securing the services of Hanna:Keelan Associates, P.C. of Lincoln, NE to conduct the study which will include: a Housing Profile, Market Demand, Land Use and Site Analysis, Identification of Funding Sources and Pre-Development Consulting Services; and

*WHEREAS*, Budget authority is not presently included in the current 2013-14 City budget to accommodate the request, so it is being recommended to use City Council Contingency, with actual funds provided from sales tax revenues that would be redirected from the General Fund to the Economic Development Fund.

*NOW, THEREFORE, BE IT RESOLVED* by the Mayor and Council of the City of Alliance, Nebraska, that the City of Alliance participate in the amount of \$15,000 in the NIFA Housing Study Grant with the Box Butte Development Corporation.

*BE IT FURTHER RESOLVED* that funding in the amount of \$15,000 be authorized from the City Council's Contingency Fund (Account No. 01-10-10-47-791) with actual funds provided from sales tax revenues that would be redirected from the General Fund to the Economic Development Fund.

Chelsie Herian, Executive Director of Box Butte Development Corporation addressed Council and informed them of the need to conduct a Housing Study and the opportunity to apply for this grant.

Roll call vote with the following results:

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Voting Aye: Feldges, Seiler, Benzel, Lewis.

Voting Nay: Yeager.

Motion carried.

- Board Vacancies were the final agenda item.

Council was informed that in May the Panhandle Men's Club elected Pat Tyre as the new president, which automatically appoints him to serve on the Golf Advisory Board.

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).

- Prior to adjourning, Mayor Feldges requested that staff place the non-resident library card charge on the next agenda for Council's reconsideration.
- Mayor Feldges stated, "there being no further business to come before the Alliance City Council, the meeting is adjourned at 8:40 p.m."

(SEAL)

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Fred Feldges, Mayor

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Linda Jines, City Clerk