

**ALLIANCE CITY COUNCIL**

REGULAR MEETING, TUESDAY, JUNE 7, 2016

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

The Alliance City Council met in a Regular Meeting, June 7, 2016 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 May 31, 2016. 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 June 7, 2016 Regular Meeting of the Alliance, Nebraska City Council at 7:00 p.m. Present were Mayor Yeager and Council Members Feldges, Korber-Gonzalez and Jones. Also present were City Manager Cox, Assistant City Manager/Finance Director Waggener, City Attorney Olsen and City Clerk Jines.

- Mayor Yeager read the Open Meetings Act Announcement.
- The first item of business before the City Council was to excuse the absence of Councilman Seiler as he is out of town. A motion was made by Councilman Feldges, seconded by Councilman Korber-Gonzalez to excuse Councilman Seiler.

Roll call with the following results:

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

Voting Nay: None.

Motion carried.

- The next item on the Agenda was the introduction of new City of Alliance employees. City Manager Cox introduced Charlana Hjersman and Shawn Woods, Police Officers; D.J. Weare, Lineman Apprentice and announced the promotion of Tim Peterson from Police Office to Police Sergeant.

- The Consent Calendar was the next matter for Council's consideration.

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

CONSENT CALENDAR – JUNE 7, 2016

1. Approval: Minutes of the Regular Meeting, May 17, 2016.
2. Approval: Payroll and Employer Taxes for the period May 7, 2016 through May 20, 2016 inclusive: \$195,712.42 and \$13,891.03 respectively.
3. Approval: Claims against the following funds for the period May 10, 2016 through May 31, 2016: 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; \$1,417,583.25.
4. Approval: The acceptance of a Quitclaim Deed for the East One Half (E1/2) of Lot Thirty six (36), Section Nine (9), Block Twenty (20), Third Addition to the Alliance Cemetery from Leroy Powell and Arlene Powell; and the issuance of a new Cemetery Certificate for the East One Half (E1/2) of Lot Thirty four (34), Section Nine (9), Block Twenty (20), Third Addition to the Alliance Cemetery to Mr. and Mrs. Powell.
5. Approval: The issuance of the following Contractor Licenses:
 

General Contractor Repair & Maintenance	Country Construction Adam Bolek dba Bolek-Bilt LLC Tim Overshiner dba Overshiner Construction Nick Hubbell dba Hubbell Masonry Larry Bolinger dba Bolinger & Associates
Master HVAC	Adam Bolek dba Bolek-Bilt LLC Randy Coleman dba RLC Heating, Air & Appliance Repair Brue Pylkas dba Total Mechanical Services, Inc.
Gas Fitter	Adam Bolek dba Bolek-Bilt LLC Randy Coleman dba RLC Heating, Air & Appliance Repair Brue Pylkas dba Total Mechanical Services, Inc.
Roofer	Rich Schank dba Schank Roofing Services
6. Approval: Resolution No. 16-72 approving Change Order No. 1 and payment authorization for the 2015 Alliance Asphalt Overlay Project with Simon Contractors. The Change Order provides for an \$81,352.50 deduction due to the removal of 18<sup>th</sup>

Street from Colorado Avenue to Emerson Avenue from the project. The resolution also authorizes the first installment payment in the amount of \$152,600.90.

7. Approval: Resolution No. 16-73 entering into an Agreement with Box Butte County for the Public Transit Program.
8. Approval: Resolution No. 16-74 entering into a Lease with the Alliance Public Schools for the trail system.
9. Approval: Resolution No. 16-75 granting a Special Designated License to Dondon Inc. for a catering event on June 23, 2016 between 3:00 p.m. and 9:00 p.m. at 515 Niobrara Avenue.
10. Approval: The Request of Historic Main Street/Box Butte Development for the closure of the 200 block of Box Butte Avenue and 2<sup>nd</sup> Street intersection to both the east and west alleys for the Band on the Brick series. They are requesting the closure between the hours of 3:00 p.m. and 10:00 p.m. The series is held on Fridays beginning July 1 and concluding on August 5, 2016.

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.

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.

Roll call vote with the following results:

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

Voting Nay: None.

Motion carried.

- City Manager Cox gave his City Manager's Report which follows in outline form:

1. RV Parking - Received request to revisit on 6.21
2. Fire Truck- Found a couple of problems that are being repaired;
3. New Ambulance – Delivery on Wednesday, 6.8
4. Streetscape
  - a. NDOR notified ... missed the deadline; Pushing project to 2017
  - b. CM Appealed to NDOR Director for Intercession
  - c. NDOR Director stepped
  - d. NDOR – Unheard of: Special Bid Letting on 6.30
  - e. Bid Award: 7.19
  - f. Schedule:
    - i. 300 Block in 2016
    - ii. 400 Block in 2017

- Council next conducted a Public Hearing on the Rezoning Application of Bomgaars. Ordinance No. 2803 which will approve the rezone, has been prepared for Council's consideration following the public hearing. Council was provided with the following background information:

[Bomgaars is requesting to rezone a portion of land from A (Agriculture) to C-3 (Highway Commercial) district so a new retail store may be constructed on a lot being proposed as Bomgaars Addition to the City of Alliance.

The land is located west of United States Highway 385 and south of Country Club Road and is part of unplatted lands in the Northeast Quarter of the Southeast Quarter of Section 34, Township 25 North, Range 48 West of the 6<sup>th</sup> Principal Meridian.

The proposed rezone will change the front setback from 50' to 15', the side street setbacks from 50' to 15' and side setbacks from 10' to 0' and add rear setbacks of 15'. The land is currently used for agriculture and there are no existing structures.

The preliminary plat for Bomgaars Addition to the City of Alliance was passed by Council without amendment during the May 3, 2016 meeting and the final plat will follow this rezone. The rezone is necessary as the approval of the final plat would result in a nonconforming lot size and the proposed use is not allowed in the A (Agriculture) zoning district.

Notification Petitions were sent to property owners within a 300' radius of the subject property. The City mailed five petitions and as of May 13, the City had received one of them back in favor of the rezone.

At the May 10, 2016 Planning Commission meeting, the Commissioners voted to recommend the approval of the rezone of a portion of land described within the Northeast Quarter of the Southeast Quarter of Section 34, Township 25 North, Range 48 West of the 6<sup>th</sup> Principal Meridian (Metes and Bounds Description is in the ordinance).]

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 Rezone Application of Bomgaars to rezone the southwest corner of Country Club Road and US 385 and opened the public hearing at 7:08 p.m.

Community Development Director Brent Kusek was in attendance to discuss the Rezone Application and made the recommendation to approve the request prior to the Final Plat of the property.

Terry Curtiss, 416 Niobrara Avenue, was in attendance representing the owner, James Jelinek to support the proposed rezone. In order to keep the project moving forward, Mr. Curtiss

requested the statutory requirement of three separate readings on different dates of the ordinance be suspended.

Hearing no additional testimony, the Public Hearing closed at 7:12 p.m.

A motion was made by Councilman Jones, seconded by Councilman Korber-Gonzalez to approve the first reading of Ordinance No. 2803 which Clerk Jines read by title and follows in its entirety.

#### ORDINANCE NO. 2803

AN ORDINANCE OF THE CITY OF ALLIANCE, NEBRASKA, DEALING WITH ZONING, SETTING FORTH CONDITIONS FOR PASSAGE, AND AMENDING THE DISTRICT ZONING MAP TO SHOW THAT A TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 25 NORTH, RANGE 48 WEST OF THE 6TH P.M., CITY OF ALLIANCE, COUNTY OF BOX BUTTE, STATE OF NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION BEING MONUMENTED BY A CHISELED “+” FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION BEING MONUMENTED BY A NUMBER 5 REBAR BEARS  $S01^{\circ}26'16''E$  A DISTANCE OF 2671.93 FEET (BASES OF BEARINGS) WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE  $S88^{\circ}43'08''W$  ALONG THE EAST-WEST CENTERLINE OF SAID SECTION A DISTANCE OF 248.73 FEET; THENCE  $S01^{\circ}16'52''E$  PERPENDICULAR TO SAID EAST-WEST CENTERLINE OF SECTION A DISTANCE OF 28.08 FEET TO A POINT ON THE SOUTH RIGHT OF WAY FOR COUNTRY CLUB ROAD AND THE POINT OF BEGINNING; THENCE  $S00^{\circ}20'15''E$  ALONG THE WESTERLY RIGHT OF WAY LINE FOR UNITED STATES HIGHWAY 385 A DISTANCE OF 579.19 FEET; THENCE LEAVING SAID RIGHT OF WAY LINE  $S89^{\circ}39'45''W$  A DISTANCE OF 442 FEET; THENCE  $N00^{\circ}20'15''W$  A DISTANCE OF 424.97 FEET TO THE SOUTH LINE EXTENDED OF THAT PARCEL DESCRIBED IN WARRANTY DEED RECORDED JULY 16, 1998 IN BOOK 87 OF DEEDS ON PAGE 444 IN THE RECORDS OF THE BOX BUTTE COUNTY CLERK AND RECORDER'S OFFICE; THENCE  $N88^{\circ}43'08''E$  ALONG SAID SOUTH LINE AND IT'S EXTENSION A DISTANCE OF 154.66 FEET TO THE EAST LINE OF SAID PARCEL; THENCE  $N01^{\circ}16'52''W$  ALONG SAID EAST LINE A DISTANCE OF 165.64 FEET TO THE SOUTHERLY RIGHT OF WAY LINE FOR COUNTRY CLUB ROAD; THENCE  $N88^{\circ}42'08''E$  ALONG SAID SOUTHERLY RIGHT OF WAY LINE A DISTANCE OF 229.02 FEET; THENCE  $S74^{\circ}06'21''E$  CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY LINE A DISTANCE OF 63.63 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 4.84 ACRES, MORE OR LESS IS NOW INCLUDED AS A C-3 (HIGHWAY COMMERCIAL) DISTRICT FROM AN A (AGRICULTURE) 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

(a) 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.

(b) 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 \_\_\_\_\_, 2016, 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 Feldges, seconded by Councilwoman Korber-Gonzalez to suspend the statutory rule requiring three separate readings of Ordinance No. 2803.

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

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

Voting Nay: None.

Motion carried.

Roll call vote to approve Ordinance No. 2803 on final reading with the following results:

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

Voting Nay: None.

Motion carried.

Mayor Yeager stated, “the passage and adoption of Ordinance No. 2803 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published.”

- A Public Hearing on the proposed Final Plat for Bomgaars Addition to the City of Alliance was the next item before Council. Ordinance No. 2804 which will approve the Final Plat, has been prepared for Council’s consideration following the public hearing. Council was provided with the following information:

[The City of Alliance is in receipt of an application for a Final Plat from James Jelinek as the land owner and Dave Meyer representing Bomgaars, the potential future developer. The Final Plat application is to separate a 5.434 acre tract of land for the development of a new retail store for Bomgaars, the dedication of a 66’ wide frontage road and easement for utilities and drainage.

The location of the proposed subdivision is in the Northeast Quarter of the Southeast Quarter of Section 34, Township 25 North, Range 48 West of the 6<sup>th</sup> Principal Meridian. It is located at the southwest corner of the intersection of West 3<sup>rd</sup> Street, US Highway 385, and Country Club Road.

The property is bordered to the north, west, and south, by A (Agriculture) zoning and to the east by C-3 (Highway Commercial) zoning. The land to be platted is zoned A (Agriculture). The zoning of the unplatted lands being platted should be changed from A to C-3 before the approval of the Final Plat as retail sales establishments are not permitted uses in the A (Agriculture) zoning district and the new lot would be of a nonconforming size.

The City of Alliance Planning Commission met at its regular meeting May 10, 2016 and held a public hearing at which time Terry Curtiss, acting as a representative of the land owner, requested the item be tabled until the issue of the owner’s use of the access to his farming operation is resolved. They closed the public hearing and voted to table the item and to reconvene at a special meeting on May 24, 2016. At which time they voted to affirm a recommendation to the Alliance City Council for the approval of the Final Plat of Bomgaars Addition to the City of Alliance contingent on the addition of signature lines for the property owner in the dedication portion of the plat, the submittal of a streetlight plan, the submittal of public improvement guarantees, a petition letter asking the City to annex the subdivision, and that the Council discuss the possibility of an agreement or statement indicating to the current property owner that the City does not have any intentions of placing weight restrictions on the frontage road keeping him from his field to the south. Said subdivision of land is described as Lands in the Northeast Quarter of the Southeast Quarter of Section 34, Township 25 North, Range 48 West of the 6<sup>th</sup> Principal Meridian, Box Butte County, Nebraska.

Additionally, please find in your packet a letter request from Terry Curtiss dated May 31, followed by a letter response from our City Attorneys dated June 3.]

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 Final Plat for Bomgaars Addition to the City of Alliance and opened the public hearing at 7:17 p.m.

Terry Curtiss, 416 Niobrara Avenue, legal counsel for the owner, James Jelinek appeared before Council and expressed a desire for the Council to enter into a contract with Mr. Jelinek to guarantee permanent access to his property with agricultural vehicles. Mr. Curtiss stated that although the City’s legal counsel opinion is the City Council cannot enter such a contract which obligates future Council’s, he believes differently. Significant discussion took place regarding the difference in legal opinions.

Mr. James Jelinek, 6490 Madison Road informed Council that he would be satisfied with a single paragraph to allow him to use the driveway for trucks and he would be willing to dedicate the property to the City. He stated he is requesting this as he is fearful the County may limit the use of the County road with weight restrictions and wants to protect his access to the property.

Dave Meyer, Bomgaars’ representative, is eager to move forward with the project and is hopeful a compromise can be reached between the current property owner and the City.

Electric Superintendent Tvrs addressed Council, at their request, regarding a statement which was made by Mr. Curtiss on the placement of the electric poles. Mr. Tvrs stated the poles were being place in the State ROW and there was no need to have them on Mr. Jelinek’s property.

There being no additional testimony the Mayor closed the Public Hearing at 7:59 p.m.

City Attorney Olsen addressed with Council the “binding forbearance” issue that Mr. Curtiss has a difference of opinion. Staff also informed Council of the items still needed prior to completing the Final Plat.

A motion was made by Council Jones, seconded by Councilman Feldges to approve the first reading of Ordinance No. 2804 which Clerk Jines read by title and follows in its entirety.

#### ORDINANCE NO. 2804

AN ORDINANCE APPROVING THE FINAL PLAT OF BOMGAARS ADDITION TO THE CITY OF ALLIANCE, SITUATED IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 25 NORTH, RANGE 48 WEST OF THE 6TH P.M., CITY OF ALLIANCE, COUNTY OF BOX BUTTE, STATE OF 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 Final Plat of Bomgaars Addition to the City of Alliance, situated in the Northeast Quarter of the Southeast Quarter of Section 34, Township 25 North, Range 48 West of the 6th P.M., City of Alliance, County of Box Butte, State of Nebraska, from Dave Meyer representative of Bomgaars.

SECTION 2. The Planning Commission held a public hearing May 10, 2016, to consider the Final Plat, and after such hearing, tabled action until a Special Meeting on May 24, 2016 and then recommended approval of the Final Plat and said Plat is now submitted to the City Council for approval.

SECTION 3. The subdivision regulations of the City of Alliance contained in the Municipal Code, require the City Council by ordinance to adopt the final plat of any proposed subdivision within the City of Alliance.

SECTION 4. The City Council finds that the Final Plat contains the information required by Section 113-114 of the Alliance Municipal Code, which is relevant to this request.

SECTION 5. The City approval of this Plat is contingent upon the fulfillment of the requirement that an improvement guarantee and agreement for security be signed by the developer of the property, Dave Meyer, Bomgaars and approved by the City Engineer (Community Development Director) and the City Attorney, and all conditions required by the Planning Commission have been met.

SECTION 6. The City Council finds that the Final Plat of Bomgaars Addition to the City of Alliance, situated in the Northeast Quarter of the Southeast Quarter of Section 34, Township 25 North, Range 48 West of the 6th P.M., City of Alliance, County of Box Butte, State of Nebraska, is 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 the receipt of the improvement guarantee and agreement for security. 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 7. 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. 2804 with the following results:

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

Voting Nay: None.

Motion carried.

- A Public Hearing on the Rezone Application of Jerry Reynolds was the next item on the agenda. Ordinance No. 2805 which will approve the Application has been prepared for

Council's consideration following the public hearing. Council was provided with the following information:

[Jerry Reynolds is requesting to rezone Lot 27A, Block 9, Lakefield Addition from C-1 (Neighborhood Commercial) to C-3 (Highway Commercial) so that he may develop storage units on the lot. This is a corner lot located east of Emerson Avenue and north of West 25<sup>th</sup> Street.

The proposed rezone will change the front setback from 25' to 15', the side street setbacks remain 15', side setbacks remain 0', and rear setbacks from 25' to 15'. The lot is currently vacant.

Notification Petitions were sent to property owners within a 300' radius of the subject property. The City mailed six petitions and as of May 13th, the City had received one of them back in favor of the rezone.

The purpose of zoning is to evaluate and establish the best use of property and separate incompatible land use types. Zoning does not work when "spot zoning" occurs. Spot zoning is defined by *Anderson's American Law of Zoning* as "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners." Spot zoning is considered the antithesis of planned district zoning and its use is not conducive to consistent application of the zoning code.

The property was zoned C-1 when platted in 1977 and rezoned C-2 in 1978. In 2001, the City rezoned many parcels of land, including this one, to clean up spot zoning in Alliance. The C-1 (Neighborhood Commercial) district is meant to provide an area of low-impact commercial uses and establish setback restrictions similar to those found in residential zoned districts. C-3 (Highway Commercial) is meant to accommodate commercial businesses that provide access to highways and transportation thoroughfares and cater primarily to the traveling public. Rezoning this property to C-3 would intensify its permitted uses to include theaters, hotels, motels, restaurants, contractor yards, landscaping yards, well drillers, semi-truck parking and repair facilities, etc. Staff believes these are not desirable uses in a residential district and considered spot zoning and thus staff did not recommend the rezone of the property to the Planning Commission.

At the May 10, 2016 Planning Commission meeting, the Commissioners voted 5 to 1 to recommend the approval of the rezone of Lot 27A, Block 9, Lakefield Addition to the City of Alliance from C-1 (Neighborhood Commercial) to C-3 (Highway Commercial). Commissioner Brian Mischnick has prepared a letter with the suggestion that storage units be added as a use in the C-1 district for Council consideration.]

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 Rezone Application of Jerry Reynolds to rezone Lot 27A, Block 9, Lakefield Addition from C-1 (Neighborhood Commercial) to C-3 (Highway Commercial) and opened the public hearing at 8:20 p.m.

Community Development Director Brent Kusek was in attendance to answer questions of Council in regard to the rezone.

Mr. Steven Ediger, 2720 Emerson Avenue appeared before Council and spoke against the rezone. Mr. Ediger believes this is a very dangerous site for storage units within a residential district. He utmost concern is the safety of children which there is a high number of within this area. He reported this is a high traffic area and presently has concerns without the addition of another high traffic facility.

Mr. Terry Curtiss, 416 Niobrara Avenue is legal counsel for the applicant. Mr. Curtiss stated the property is already zone commercial and he does not believe changing to a different commercial classification would be “spot” zoning. He also noted that the Planning Commission at their May 10<sup>th</sup> regular meeting has recommended approval.

Hearing no additional testimony was offered, the Public Hearing closed at 8:36 p.m.

Councilman Feldges read into the record the following letter from Brian Mischnick, a member of the Alliance Planning Commission.

“I am writing in regards to the rezone request by Jerry Reynolds at the May 10<sup>th</sup> Planning Commission meeting to change Lot 1a, Replat of Lot 27, Block 9 from C-1 Neighborhood Commercial to C-3 Highway Commercial. The rezone is being requested so storage units can be built on the property.

At the meeting, no one was present to speak and no petitions were returned against the rezone or storage units. If the Council decides storage units are appropriate at this location, another solution to the zoning issue would be to modify C-1 code to allow for storage units.

Modfying C-1 provides several benefits:

- The front street setback would stay at 25 feet instead of shrinking to 15 feet thus allowing better visibility at a busy intersection.
- Provisions against activities disturbing residential areas remain in effect. This is important given the large number of single and multi-family dwellings in the immediate vicinity.
- Aesthetic requirements to ensure the new construction meets minimum standards and fits with existing structures.

Rezoning to C-3 creates two major problems:

- Sets the precedent of a spot zone, which would make it difficult to deny spot rezone requests in the future since one exception has already been made.
- If the lot is sold in the future, the new owner would be able to conduct activities and build structures normally kept farther away from residential areas.

I did vote yes to the rezone during the Planning Commission meeting because I felt storage units would be appropriate at the location. However, as I consider long term consequences of the rezone, I urge the Council to consider modifying C-1 to include a provision for residential storage units rather than creating a spot zone of C-3.”

A motion was made by Councilman Jones, seconded by Councilman Feldges to forward the questions of whether storage units would be an acceptable use within the C-1 (Neighborhood Commercial) zone or if a Conditional Use Permit would better fit this request and what their recommendation would be moving forward.

Roll call vote with the following results:

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

Voting Nay: None.

Motion carried.

- A Public Hearing on the change of zoning regulations of the Alliance Municipal Code in regard to the use of shipping containers was the next agenda item. Ordinance No. 2806 which will approve the new language for the Municipal Code, has been prepared for Council’s consideration following the public hearing. Council was provided with the following information:

[Community Development staff and the Alliance Planning Commission have recognized the need for code that specifically deals with Shipping Containers within the City of Alliance. The Municipal Code does not have any language that regulates the use or placement of Shipping Containers.

This code focuses on the requirements for the containers specifically on residential and light commercial (C-0, C-1, and C-2) properties and provides general guidelines for all other zoning districts.

The code will allow containers to be used on residential properties for two specific uses. As long as a Building Permit exists for the lot, the container is allowed to house construction material, tools, etc. and may also be used for moving with the issuance of a Zoning Permit. The proposed code maintains these

uses in residential and light commercial neighborhoods while eliminating the possibility of the containers to be used as long term storage.

The most common use for these containers in commercial and industrial districts is construction and storage. They are used by contractors for material and equipment storage and shipment. The proposed code has provisions written into it that allow these containers on heavy commercial and industrial properties with general requirements keeping them out of setbacks, rights of way, and easements.

State Statute 19-904.01 provides the legislative body with the ability to terminate a nonconforming use. Staff has documented two of these containers in residential districts at this time. The Planning Commission did not find it a worthwhile endeavor to formulate a specific time in which to require the preexisting use of these two containers to cease.

The City of Alliance Planning Commission met several times to draft a code that works as intended and is enforceable by staff. They held a discussion about the proposal at their regular meeting on June 9, 2015 and made recommendations to staff. Hoping for input from the public, they then held a public hearing at their regular meeting on July 14, 2015 wherein they finalized a draft copy. Staff did not believe this draft was enforceable on industrial and some commercial properties. They held another public hearing at the May 10, 2016 Planning Commission meeting where they recognized the difficulties with enforcement. They then changed the code and recommended that the Alliance City Council add Section 115-175, titled *Shipping Containers* to the 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 proposed amendment to the Alliance Municipal Code addressing shipping containers and opened the Public Hearing at 8:39 p.m.

Community Development Director Brent Kusek was in attendance to answer questions of Council and explained the necessity to include the language in the City’s Code.

Lynn Finlayson, 629 Conestoga Avenue, believes these storage units are a nice alternative. He has a desire to place three of the units in his backyard, which will save him considerable money as he will not have to rent commercial storage units any longer. Mr. Finlayson felt the units could be painted to look nice.

Roger Bunnell, 612 Sweetwater Avenue, spoke in favor of placing restrictions on the use of shipping containers as they are an eye sore in the community and also can act as a nuisance due to their placement. Individuals are not required to pay taxes on these containers. If the containers are allowed, Council is urged to place common sense restrictions for their use.

No additional testimony was offered, the Public Hearing closed at 8:52 p.m.

A motion was made by Councilman Feldges, seconded by Councilman Korber-Gonzalez to approve the first reading of Ordinance No. 2806 which Clerk Jines read by title and follows in its entirety.

### ORDINANCE NO. 2806

AN ORDINANCE PERTAINING TO THE USE OF SHIPPING CONTAINERS AND ADDING SECTION 115-175 WITHIN THE ZONING REGULATIONS OF THE ALLIANCE MUNICIPAL CODE; 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. Section 115-175 of the Code of Ordinances of the City of Alliance, Nebraska is hereby added to read as follows:

Sec. 115-175. – Shipping Containers.

(1) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Shipping Container* shall mean any container, which may otherwise be known as a container, freight container, ISO container, shipping container, hi-cube container, box, sea container, or container van, designed to store and move materials and products across various modes of the intermodal freight transportation system.

(2) *General Restrictions.* Shipping Containers in all Zoning Districts:

- a. May be placed in the front yard setback only if being used for moving or relocating purposes.
- b. May not be placed in the Fence Vision Triangle as defined in Section 115-172 of the Alliance Municipal Code.
- c. Must be kept out of easements, public rights-of-way, and setbacks except as otherwise provided for in this code.

(3) *Residential and Commercial Requirements.* In all Residential zoning districts and in the C-1, C-0 and C-2 Commercial districts no Shipping Container shall be allowed except as herein provided:

- a. *Moving:* A Shipping Container may be allowed on a developed lot, if used for moving purposes, for a period of 30 days after the issuance of a

zoning permit. If additional time is required the applicant may apply for one 30 day extension.

- b. Construction: Shipping Containers may be placed on a lot without a zoning permit if it is incidental to the permitted construction activities on the same lot. The Shipping Container must be removed with the completion of the project or expiration of the building permit.

SECTION 2. 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. 2806 with the following results:

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

Voting Nay: None.

Motion carried.

- The first reading of Ordinance No. 2807 which will amend Chapter 28 of the Alliance Municipal Code regarding electric services was the next item on the agenda. Council was provided with the following information:

[Chapter 28 of the City of Alliance Municipal Code addresses utility services within the City and surrounding areas. The current Code is somewhat unclear in regard to assumption of costs in relation to new electric services, service upgrades and line extensions. The wording and interpretation of the current Code has led to large credits offered by the City toward electric projects and minimal recapture of associated costs.

#### Current Code

The current credits are based on the three-year estimate of customer revenues based on the anticipated rate class which is difficult to establish and explain to customers and burdensome to administer with limited cost sharing. The Code did not allow for any adjustment if actual consumption varied from the estimated levels. For example in a recent fiscal year, only 11% of total costs were collected from customers on nineteen electric projects with a total cost just over \$400,000. Although the current practice is seen as consistent with the traditional concept of “public power”, it places a large burden on all rate payers and allows heavily subsidized line extensions and services with no guaranty of future revenues. Also, the line was blurred between line extensions and service installations with the waiver in the past of revenues that should have been collected by the City.

#### Proposed Code

Staff feels that it is important that the cost born by new customers as well as the existing ratepayers be fair. In other words, it is also important to strike the right

balance so that that the rest of the ratepayers do not have to subsidize an unfair portion of the costs for a new large customer. The revised Code accomplishes the following objectives:

- Defines urban and rural service, new service, service upgrade and line extension serving as a basis for establishing cost sharing.
- Clarifies that all electric projects involving electric service and line extensions are subject to the preapproval of the City of Alliance in regard to type of service (overhead or underground) and specification of materials.
- Establishes that the customer is generally responsible for 100% of the costs with the exception of the following:
  - Urban line extensions of less than 100 feet and rural line extensions of less than 660 feet which the City assumes all costs.
  - Credit of 50% of actual costs of longer line extensions. (The credit is waived if the service is not energized within six months of completion of the installation.)
- Upgrades some of the equipment specifications included in the Code.]

A motion was made by Councilman Jones, seconded by Councilman Feldges to approve the first reading of Ordinance No. 2807 which Clerk Jines read by title and follows in its entirety.

#### ORDINANCE NO. 2807

AN ORDINANCE OF THE CITY OF ALLIANCE, NEBRASKA, AMENDING THE MUNICIPAL CODE BY WITHIN CHAPTER 28 – UTILITIES, ARTICLE III, ELECTRIC SYSTEM, SECTIONS 28-65, 28-81, 28-83, 28-84, 28-85, 28-88, 28-89, 28-90, 28-91, 28-94, 28-95, AND 28-97; REPEALING PRIOR PROVISIONS OF THE MUNICIPAL CODE WHICH ARE INCONSISTENT WITH THIS ORDINANCE, PROVIDING FOR AN EFFECTIVE DATE AND PROVIDING FOR PUBLICATION IN PAMPHLET FORM.

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

SECTION 1. The Alliance Municipal Code at Section 28-65 shall be amended as follows:

Sec. 28-65. - 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:

*Alliance Municipal Electric System (AMES)* means the city manager, electric superintendent, employees or representatives or any combination of the persons mentioned within this definition.

*Code* means the National Electrical Code as adopted by the city and the 2007 edition of the National Electrical Safety Code.

*Customer, subscriber, user, or consumer* includes and refers to any individuals, developers, firms, agencies or corporations who may be a consumer of or an applicant for electric service.

*Line Extension* means a continuation of AMES existing electric distribution system as required to serve a proposed customer load.

*New Service* means a new run of conductors and associated hardware from the AMES' power distribution system to the point of connection at customer's premises.

*Notice to AMES* means the written or verbal notice or application addressed to: electric superintendent, the Utility Customer Service Office or AMES, P.O. Box D, Alliance, Nebraska 69301.

- (1) Nothing written in this article shall be interpreted to or place upon AMES any duty, obligation, or responsibility to install, maintain, or make repair (other than metering devices such as meters, current transformers, potential transformers or any AMES installed electrical equipment on the customer's premises or private property) on the customer's side of the point of delivery of electrical energy. This shall be the point the wires of AMES first attach to any building, structure, device or URD termination on the customer's premises or property.
- (2) No representative or employee of AMES shall have any right to promise, commit, or agree to anything not authorized by these rules and regulations. Written notice must be presented to the city manager for consideration of authorization to delete or deviate from these rules and regulations.

*Rural Service* means outside of the City's corporate limits.

*Service Upgrade* means a change to the existing conductors and/or equipment for delivering energy from electric utility to customer premises being served.

*Urban Service* means inside the City's corporate limits.

SECTION 2. The Alliance Municipal Code at Section 28-81 shall be amended as follows:

Sec. 28-81. - Point of delivery and service entrance.

- (a) It shall be the sole responsibility of each prospective customer to obtain from AMES information as to the point at which AMES will provide service to the customer's premises, and thereafter to wire said premises in accordance with such information.

AMES shall have no responsibility, duty or obligation to furnish service at any point other than that designated by the electric superintendent.

- (b) The point of delivery of all electric energy furnished by AMES to any customer shall be at the point where the wires of AMES first attach to any building, structure, device or wiring belonging to the customer. At such point AMES will attach its wires to approved devices (e.g., house knobs, racks, pedestals, dead-end wiring, terminators, etc.). All approved structural brackets or framework required for attaching high voltage service wires (carrying 600 volts or more) to the customer's premises shall be furnished and installed by the customer at the customer's sole risk, cost and expense with the approval of AMES.

SECTION 3. The Alliance Municipal Code at Section 28-83 shall be amended as follows:

Sec. 28-83. - Same—Charges.

The customer shall pay ■ 100% of the cost of any special installation, including labor, material and equipment costs, necessary to meet the customer's particular requirement for service other than standard voltages, or for the supply of closer voltage regulation or uninterrupted service than required by standard practice of AMES.

SECTION 4. The Alliance Municipal Code at Section 28-84 shall be amended as follows:

Sec. 28-84. - ~~Maximum~~ Length and type of ■ electric service.

The ~~maximum~~ length and type (either overhead or underground) of ■ electric service wires which will be run to a residential, commercial or industrial customer will be established by AMES based on the wire size required, site conditions and normal service characteristic (~~normally plus or minus 150 feet~~) at customer's expense.

SECTION 5. The Alliance Municipal Code at Section 28-85 shall be amended as follows:

Sec. 28-85. - Installation of service.

- (a) AMES will permit the installation of service at any point on a building, residential or commercial, so long as the service wires and installation conform to the code. AMES will not be required to build additional line facilities in order to reduce customer wiring costs to serve a prospective customer when existing lines can be used. Where services are installed which will require the service wires to overhang the roof, the weatherhead

shall be located at a sufficient height above the roof to permit code clearance between the roof and service conductors.

- (b) All overhead service wires carrying nominal voltages which supply single-phase or three-phase service shall be run from the point of delivery to the service switch and protective cabinet in continuous rigid metallic conduit which shall enter and be made fast to the protective cabinet by means of bushings and locknuts. AMES may at its option, if construction requirements warrant, permit the use of current transformers for electric metering when the service provides for a commercial or industrial load. All underground services shall be approved by AMES. All wires over which service is rendered at 600 volts or higher shall also be run in continuous rigid metallic conduit or schedule 80 PVC duct and shall terminate in terminators of proper electrical rating. ~~The customer shall, at the customer's sole expense, furnish and install all wiring, conduit and terminations required under this article and the code.~~
- (c) All service wires shall conform, in size and in conductivity, to all requirements of the code and in no case shall service wires be smaller or have lower conductivity than approved by the code.

SECTION 6. The Alliance Municipal Code at Section 28-88 shall be amended as follows:

Sec. 28-88. - Grounding of secondary and service wires.

All installations shall be grounded at the meter locations. The ground wire shall be continuous through those electric meter backs which have only one ground connector. ~~ground wire for the service neutral conductor shall be run to the water piping system when available and connected at a point which is readily accessible for inspection by representatives of~~ The size of the ground wire and the method of installation thereof shall be in accordance with the code. ~~The customer shall provide a metallic bond across the water meter location when cold water pipes are used as a neutral conductor ground.~~

SECTION 7. The Alliance Municipal Code at Section 28-89 shall be amended as follows:

Sec. 28-89. - Service connection.

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

*Service connection.*

- (1) The term "service connection" means that portion of the distribution system installed for the particular use of any given customer, to-wit, that portion of the distribution system extending from the nearest pole or underground facility to the point of delivery, (i.e., to the first point of attachment to a building, device, wiring or other structure on the customer's premises).
  - (2) The term "service connection" does not include any lines, poles or facilities located on streets, alleys, public places or rights-of-way of AMES.
- (b) AMES shall own all service connections.
- (c) All underground services shall be code-approved insulated and/or shielded cable properly protected by metal conduit, schedule 40 or schedule 80 PVC, and shall terminate in an approved conduit, cable pothead, or other means as approved by AMES. The cable shall be protected with metallic conduit for a ten-foot length on any pole, an approved attachment bracket shall be installed by the customer for mounting of the conduits or adequately protected by schedule 80 PVC and a ten-foot length of PVC guard from ground level.
- (d) ~~All underground services installed by the customer shall be at his sole risk, cost and~~  
[REDACTED] AMES inspections of these services must be completed before services will be energized.

SECTION 8. The Alliance Municipal Code at Section 28-90 shall be amended as follows:

Sec. 28-90. - Line Extension policy.

- (a) *Aerial construction line extension.*
- (1) *Single-phase for permanent, class 1, 2 or 3 nonseasonal loads.* Customer will pay [REDACTED] actual costs in excess ~~of projected three-year revenues~~ the credit as allowed in Sec. 28-90 (d), with 50 percent of the estimated cost [REDACTED] paid prior to beginning of construction and the balance upon completion.
  - (2) *Single-phase for seasonal loads (including irrigation recirculation systems).*
    - a. ~~Estimate of cost of extension.~~
    - b. ~~Estimate three years of customer revenue.~~[REDACTED] Customer will pay ~~difference between estimated~~ actual costs in excess of the credit as allowed I Sec. 28-90 (d), ~~subsection (a)(2)a of this section, and estimated revenue, subsection (a)(2)b of this section,~~ with 50 percent of the

estimated cost [REDACTED] paid prior to the beginning of construction and the balance upon completion.

- b. Motors up to and including 7.5 horsepower on seasonal loads are to be single phase (rural lines).
- (3) *Three-phase for class 2, 3, 4 or irrigation.*
  - a. ~~The c~~Customer will pay actual costs in excess of the credit as allowed in Sec. 28-90 (d) ~~projected three years of revenue~~ for construction or conversion from single phase, with 50 percent of the estimated cost [REDACTED] paid prior to beginning of construction and the balance upon completion.
  - b. Center pivot irrigation system. The customer will be responsible for installing buried secondary service from transformer pole to pump location.
- (4) *Relocation of poles at the request of the customer.* The customer shall pay for all costs involved in relocating existing poles, transformers and equipment.
- (5) *Temporary line extensions.* Any temporary extension for use of construction, temporary power, or any other uses; customer will be charged labor, equipment and materials, plus 25 percent material handling charge to construct and salvage said extension. Salvage material, other than customers', will be retained by the city.
- (b) *Underground construction for extensions from aerial system at primary voltage.*
  - (1) *Single-phase to all service classifications seasonal or nonseasonal loads.* The customer shall pay [REDACTED] actual costs in excess of the credit as allowed in Sec. 28-90 (d), with 50 percent of the estimated cost [REDACTED] paid prior to beginning of construction and the balance upon completion.
  - (2) *Three phase for all service classifications.*
    - a. The customer shall pay [REDACTED] actual costs in excess of the credit as allowed in Sec. 28-90 (d), with 50 percent of the estimated cost [REDACTED] paid prior to beginning of construction and the balance upon completion.
    - b. If three-phase construction or single-phase conversion is required to extend aerial distribution to point of contact with underground, the extension conditions applicable to aerial extension shall apply as to any added costs.

Note—Subsection (b) of this section is to be interpreted as extending the line described in subsection (a) of this section from the AMES aerial distribution to transformers installed in close proximity to residence or commercial establishment for aesthetic or convenience of customer's load.

  - (3) *Three-phase for irrigation.*
    - a. ~~Estimate of aerial construction.~~
    - b. ~~Estimate of buried construction.~~

- Customer will pay actual costs in excess of the credit as allowed in Sec. 28-90 (d), with ~~the difference between costs of aerial and buried construction~~, 50 percent of the estimated cost ■ paid prior to beginning of construction and the balance upon completion.
- (4) *Temporary URD extensions.* All approved temporary underground extensions will be at the customer's sole expense and risk, including metering at a point on AMES distribution system.
- (5) *Secondary services.* Services that are 600 volts and below from transformer installed on pole or individual pad-mount transformer:
  - a. Customer shall pay all URD costs, 50 percent of the estimated cost must be paid prior to beginning of construction and the balance upon completion.
  - b. Temporary services will be at customer's full expense, material, equipment and labor, to nearest existing distribution point.
- (c) *New areas by developers: service single- and/or three-phase ■ systems.*
  - (1) The developer shall pay ~~the difference between estimated~~ all actual costs of aerial ~~versus actual~~ or URD systems ~~cost (refer to subsection (a), (b) or (c) of this section and~~.
  - (2) The developer shall install or cause to be installed all secondary services (120/240 volt three-wire) from transformer, pedestal or buried junction boxes installed as a part of the URD system.
  - (3) Any relocation, after initial installation, of any URD facility shall be at the expense of the developer or others.
- (d) *Allowable electric extension credits*
  - (1) A credit of 50% of actual costs (including labor, equipment and materials) will be allowed for all extensions, where indicated elsewhere in Sec. 28-90.
  - (2) The credit is waived if the service is not energized within 6 months after completion.
  - (3) City assumes full actual costs of line extensions less than 100 feet for urban service and 650 feet for rural service.

SECTION 9. The Alliance Municipal Code at Section 28-91 shall be amended as follows:

Sec. 28-91. - Line extension.

- (a) AMES will extend its electric distribution system along roadways dedicated for public use or within the confines of utility easements wherever the electric superintendent considers it most desirable to locate such extensions. Extensions may be made either overhead or underground on such a basis as AMES determines to be economically and

physically feasible. The applicant or group of applicants for an extension of the electric distribution system shall, as a part of the consideration of AMES extending its electric distribution system, execute and deliver without cost to AMES such easement indentures as in the opinion of AMES are or may be required at the time the extension is made or may be required in the future to extend its electric distribution system to an applicant or group of applicants located adjacent to the premises to be served by such extension. The applicant or group of applicants may also be required to contribute, in advance, that part of the estimated cost of construction in excess of the amount which, as provided in the line extension policy adopted by the city council, ~~may be justified by the estimated average annual usage of the customer.~~

- (b) AMES may not be required to set poles on or extend wires across lots or property owned by persons other than the applicant for electric service.
- (c) AMES shall not be required to extend its distribution system underground but may extend its distribution system when a contiguous group of customers or developers in a platted subdivision request the same. Such underground extensions shall be made on a basis as the electric superintendent determines to be economically and physically feasible.

SECTION 10. The Alliance Municipal Code at Section 28-94 shall be amended as follows:

Sec. 28-94. - Power installations.

- (a) Before purchasing any motor or power consuming appliance to be supplied from the system of AMES or before installing any power service, the customer or prospective customer should confer with AMES concerning such motor, other power consuming appliance or starting or controlling equipment therefor which the customer proposes to purchase or install. AMES specifically reserves and shall have the right to specify the character, type, voltage, frequency and phase of any power installation to be served from its system.
- (b) AMES will not install separate meters for single-phase lighting and power service unless the connected single-phase load is in excess of 7.5 horsepower.
- (c) All three-phase motors shall be served at voltages as approved by AMES.
- (d) Any motor or other power consuming appliance with a rating of     10 horsepower or more must have inherent characteristics or must be equipped with such starting or controlling device, a soft-start system, as will limit the starting current under all conditions to a value not exceeding three times the full load running current; however, these requirements may be waived for such period of time if AMES determines there is no adverse effect on the quality of services afforded other customers. Capacitors of adequate size will be installed on the above installations at the customer's expense, if not within the acceptable power factor limits, before service will be supplied by AMES.

Starting or controlling devices shall follow the requirements of IEE Standard 519-1992 under HARMONIC GUIDELINES.

SECTION 11. The Alliance Municipal Code at Section 28-95 shall be amended as follows:

Sec. 28-95. - Transformer installation and transformer vaults.

- (a) Where a customer's electrical load is such that it cannot be served properly from a conventional service connection and where adequate and suitable space for installation of transformers in an adjacent street or alley is not available, the customer shall furnish and set apart, without charge, a space on the premises which, in the opinion of AMES, shall be satisfactory and adequate for the installation.
- (b) Where a customer's electrical load is such that, in the opinion of AMES, a vault inside the customer's building is required or needed for installation of transformers, the customer shall furnish and set apart, without charge, a space inside the building which, in the opinion of AMES, shall be satisfactory and adequate for the installation. The customer shall, at his sole cost and expense, construct and prepare the vault in conformity with all rules, regulations and requirements of the code and shall furnish and install all bus work, conduits, disconnecting devices and hardware in said vault.
- (c) AMES will provide, furnish and install transformers at the customer's cost for electric service from its distribution system of normal distribution voltages. Electric service with underground distribution shall be furnished and installed, or caused to be so, in compliance with AMES requirements by the customer at his sole cost and expense. Upon completion and acceptance the distribution line shall become the property of AMES.

SECTION 12. The Alliance Municipal Code at Section 28-97 shall be amended as follows:

Sec. 28-97. - Aerial or underground ~~development~~ estimated costs.

- (a) Cost estimates for preliminary plats will be furnished to developers/owners for planning purposes on request. They will be given a [REDACTED] estimated cost for the electric aerial or underground system for a subdivision, trailer park or planned unit development after meeting the following requirements:
  - (1) Furnish the electric department with two copies of the final approved subdivision plat.
  - (2) Furnish the number, size, and location of points of service at which electric service is requested.

- (b) When the developer/owner requests the actual construction of the project be started, a payment of 50 percent of the quoted [REDACTED] estimated cost will be required. This partial payment need only be paid on the portion of the electric system which is to be constructed and not necessarily on the whole subdivision project provided said portion is suitable for partial electric service. Quoted ~~firm prices~~ estimated costs will include main feeders, primaries and streetlights as shown on the approved utility plat. Changes or modifications requiring additions to the quoted [REDACTED] estimated cost shall be at the expense of the developer or owners.

SECTION 13. 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 14. 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. 2807 with the following results:

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

Voting Nay: None.

Motion carried.

- The second reading of Ordinance No. 2802 amending the Alliance Municipal Code regarding the Civil Service Commission was the next item before Council. The following background information was provided to Council.

[On October 24, 1985, City Council adopted Ordinance No. 1855 incorporating the Civil Service Act, as found in the Nebraska Revised State Statutes. At that time, not all sections of the ordinance were codified. The proposed changes will codify the ordinance and update the discipline section based on recommendations of our legal department in compliance with statutes and in accordance with current practices and past experiences.

The adoption of this ordinance will incorporate and ensure compliance with the necessary requirements of the Civil Service Act and update the Municipal Code to reflect changes to the Nebraska Statutes and revise the discipline section.]

A motion was made by Councilman Korber-Gonzalez to approve the second reading of Ordinance No. 2802. The motion was seconded by Councilman Jones. City Clerk Jines read the Ordinance by title which follows in its entirety:

## ORDINANCE NO. 2802

AN ORDINANCE OF THE CITY OF ALLIANCE, NEBRASKA, AMENDING THE MUNICIPAL CODE TO INCLUDE PROVISIONS IN CHAPTER 2 RELATING TO THE CIVIL SERVICE COMMISSION TO COMPLY WITH THE CIVIL SERVICE ACT SECTIONS 19-1825 THROUGH 19-1848, REISSUE REVISED STATUTES OF NEBRASKA, 1943, AMENDING OTHER PROVISIONS OF THE MUNICIPAL CODE SO THAT THEY ARE NOT INCONSISTENT, PROVIDING FOR AN EFFECTIVE DATE, AND PROVIDING FOR PUBLICATION IN PAMPHLET FORM.

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

SECTION 1. Chapter 2, Article VI, Division 2 of the Alliance Municipal Code is amended by adding the following language:

## DIVISION 2. CIVIL SERVICE COMMISSION

## Sec. 2-261. Civil Service Commission Created.

There is hereby created in the City, a Civil Service Commission which shall have three (3) members who shall each be a citizen of the United States, a resident of such City for at least three years immediately preceding such appointment, and an elector of the county wherein such person resides.

## Sec. 2-262. Appointment of Members.

The members of the Civil Service Commission shall be appointed by the City Manager. At the time of any appointment, not more than two members of the Civil Service Commission including the one or ones to be appointed shall be registered electors of the same political party. Confirmation of the appointment(s) by any other legislative body shall not be required.

## Sec. 2-263. Members' Term of Office.

The first persons appointed to the Civil Service Commission shall for terms of two (2) years, four (4) years, and six (6) years respectively. Thereafter, all appointments shall be for six (6) years.

## Sec. 2-264. Removal from Office.

Any member of the Civil Service Commission may be removed from office for incompetency, dereliction of duty, malfeasance in office, or other good cause by the City Manager, except that no member of the Civil Service Commission shall be removed until written charges have been preferred, due notice given such member, and a full hearing had before the City Manager.

Sec. 2-265. Compensation of Members.

Members of the Civil Service Commission shall serve without compensation.

Sec. 2-266. Meetings.

The Civil Service Commission shall hold meetings as may be required for the proper discharge of its duties.

Sec. 2-267. Chairperson.

The Civil Service Commission shall annually elect one of its members as chairperson.

Sec. 2-268. Secretary and Chief Examiner.

The Civil Service Commission shall appoint a secretary and a chief examiner. The Commission may merge the positions of secretary and chief examiner and appoint one person to perform the duties of both positions. The Commission shall appoint the city's personnel officer as secretary and chief examiner, if requested to do so by the City Manager.

Sec. 2-269. Quorum.

Two (2) members shall constitute a quorum for the transaction of business.

Sec. 2-270. Powers and Duties.

The Commission shall adopt and promulgate procedural rules and regulations consistent with the Civil Service Act. Such rules and regulation shall provide in detail the manner in which examinations may be held and any other matters assigned to it by the City Manager. At least one copy of the rules and regulations, and any amendments, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any amendments shall be given to each full-time firefighter and full-time police officer. The members of the civil service Commission shall devote due time and attention to the performance of the duties specified and imposed upon them by the Civil Service Act.

Sec. 2-271. Positions Covered.

The Civil Service Act shall apply only to all present full-time firefighters or full-time police officers of the City, including any paid full-time police or fire chief of such department, and future appointees to such full-time positions. Full-time police officers shall mean police officers in positions which require certification by the Nebraska Law Enforcement Training Center, who have the power to arrest, who are paid regularly by the City, and for whom law enforcement is a full-time career, but shall not include clerical, custodial, or maintenance personnel. Full-time firefighters shall mean duly appointed firefighters who are paid regularly by the City and for whom firefighting is a full-time career, but shall not include clerical, custodial, or maintenance personnel who are not engaged in fire suppression.

Sec. 2-272. Position Creation and Elimination.

All positions subject to the Civil Service Act shall be created or eliminated by the Mayor and Council.

Sec. 2-273. Establishment of Salaries and Compensation.

The Civil Service Act shall not be construed to infringe upon the power and authority of the City Manager to establish salaries and compensation of all employees within the compensation schedule or ranges established by the Mayor and Council for the positions.

Sec. 2-274. Payment of Compensation for Services.

No treasurer, auditor, comptroller, or other officer or employee of the City subject to the Civil Service Act shall approve the payment of or be in any manner concerned in paying, auditing, or approving any salary, wage, or other compensation for services to any person subject to the jurisdiction and scope of the Civil Service Act unless the person to receive such salary, wage, or other compensation has been appointed or employed in compliance with such Act.

Sec. 2-275. City's Duty to Commission.

The Mayor and Council shall provide the Commission with suitable and convenient rooms and accommodations and cause the same to be furnished, heated, lighted, and supplied with all office supplies and equipment necessary to carry on the business of the Commission and with such clerical assistance as may be necessary. It shall be the duty of the City to appropriate each fiscal year, from the general funds of the City, a sum of money sufficient to pay the necessary expenses involved in carrying out the purposes of such act, including, but not limited to, reasonable attorney's fees for any special counsel appointed by the Commission when the City Attorney is not authorized by the City Manager to represent the Commission. The City Manager may establish the hourly or monthly rate of pay of such special counsel. The City shall afford the Commission, its members and employees all reasonable facilities and assistance to inspect all books, papers, documents, and accounts applying or in any way appertaining to any and all positions and employments subject to civil service and shall produce such books, papers, documents and accounts. All city officers and employees shall attend and testify whenever required to do so by the Commission, the accused, or City Manager.

Sec. 2-276. Political Fund Contribution and Political Service.

No person holding any position subject to civil service shall be under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever. No person shall be removed, reduced in position or salary or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote, or in any manner change the official rank, employment, or compensation of any person under civil service, or promise or threaten to do so for giving, withholding, or neglecting to make any contribution of money, services, or any valuable thing for any political purposes.

Sec. 2-277. Tenure of Employment.

The tenure of a person holding a position of employment under the Civil Service Act shall be only during good behavior.

Sec. 2-278. Causes for Disciplinary Action.

Any such person may be removed or discharged, suspended with or without pay, demoted, reduced in rank, or deprived of vacation, benefits, compensation, or other privileges, except pension benefits, for any of the following reasons:

1. Incompetency, inefficiency, or inattention to or dereliction of duty;
2. Dishonesty, prejudicial conduct, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, any act of omission or Commission tending to injure the public service, any willful failure on the part of the employee to properly conduct himself or herself, or any willful violation of the Civil Service Act or the rules and regulations adopted pursuant to such act;
3. Mental or physical unfitness for the position which the employee holds;
4. Drunkenness or the use of intoxicating liquors, narcotics, or any other habit-forming drug, liquid or preparation to such an extent that the use interferes with the efficiencies or mental or physical fitness of the employee or precludes the employee from properly performing the functions and duties of his or her position;
5. Conviction of a felony or misdemeanor tending to injure the employee's ability to effectively perform the duties of his or her position; or
6. Any other act or failure to act which, in the judgment of the Civil Service Commissioners is sufficient to justify the offender to be an unsuitable and unfit person to be employed in the public service.

Sec. 2-279. Disciplinary Action Procedure.

1. No employee in the civil service who shall have been permanently appointed or inducted into civil service shall be removed, suspended, demoted, or discharged, except for cause and then only upon the written accusation of the Police or Fire Chief, City Manager, or any citizen or taxpayer.
  - a. Written Accusation. The written accusation shall set forth the alleged misconduct, charges, or grounds for investigation against the employee. The written accusation shall be filed by the complainant with the City Manager who shall cause a copy of such written accusation to be delivered within 48 hours after the filing to the (a) Police or Fire Chief unless either be the complainant, and (b) employee personally or by certified mail, addressed to the employee at the residence address of the employee shown in the personnel records.
  - b. Suspension. The Police Chief and Fire Chief with approval of the City Manager, or City Manager shall have the authority to immediately suspend, an employee against

whom such written accusation has been filed, pending the confirmation of the suspension, or a decision of the City Manager to reinstate the employee, remove, demote, discharge, or suspend the employee, with or without pay.

- c. Investigation of Written Accusation. Prior to the decision of the City Manager to reinstate the employee or remove, demote, discharge, or suspend the employee, with or without pay, the City Manager shall within a reasonable period of time investigate the alleged misconduct, charges, or grounds against the employee and explain the basis of the employer's evidence to the employee and provide the employee an opportunity to present his or her version of the circumstances which resulted in the filing of the written accusation.
  - d. If the City Manager's investigation reveals other misconduct, charges, or grounds the City Manager shall direct the complainant Chief to amend the written accusation to include the other misconduct, charges, or grounds by filing an amendment to the written accusation with the City Manager who shall cause a copy of such amended accusation to be delivered after the filing as provided in a. above. The City Manager shall explain the basis of the employer's evidence to the employee and provide the employee an opportunity to present his or her version of the circumstances which resulted in the filing of the amended written accusation.
- In the event that a Police or Fire Chief is being disciplined, the City Manager shall follow the same procedures as are followed by the Police or Fire Chief in disciplining employees under the Act.
- e. Upon completion of this procedure the City Manager may make one of the following findings to resolve the alleged misconduct, charges, or grounds set forth in the written accusation: (1) to be without merit, (2) to not warrant disciplinary action, (3) to warrant disciplinary action less severe than removal, demotion, discharge, or suspension, with or without pay, such as an oral or written reprimand, or (4) to warrant removal, demotion, discharge, or suspension, with or without pay.
  - f. City Manager's Response. If the City Manager's determination comes under e.(4) above, within five (5) calendar days after making a decision, the City Manager shall file a copy of his or her decision with the Secretary of the Commission who shall follow the same procedure as provided in a. Written Accusation above.
2. Civil Service Commission Review. Any civil service employee so removed, suspended, demoted or discharged, may, within ten (10) calendar days after receiving written notice of the City Manager's decision, file a written demand for an investigation and public hearing by the Civil Service Commission, with the secretary of the commission and a copy to the City Manager. The failure to file such a request shall constitute a waiver of the employee's right to review by the Civil Service Commission and the City Manager's decision shall become final.

3. Employee's Responsibilities after Filing Appeal. Simultaneously with filing the demand for investigation and public hearing, the employee shall mail or deliver the following upon the City Manager and Secretary of the Civil Service Commission:
  - a. A *response* to the statement of the charge(s);
  - b. The names of the witnesses who will be called on behalf of the employee and a general statement of the nature of their testimony; and
  - c. Copies of the documents to be introduced.
4. City's Responsibility after Employee Files Appeal. Within ten (10) calendar days of receipt of the employee's notice of appeal, the City Manager shall cause to be mailed or delivered the following notice to the employee and Secretary of the Civil Service Commission:
  - a. A statement of the charge(s);
  - b. The names of the witnesses who will be called on behalf of the City Manager and a general statement of the nature of their testimony;
  - c. Copies of the documents to be introduced.
5. Investigation Conducted on Employee's Appeal. Upon receipt of a written demand, the Commission shall conduct an investigation. The Commission may be represented in such investigation and public hearing by the City Attorney if authorized by the City Manager. If the City Attorney does not represent the Commission, the Commission may be represented by special counsel appointed by the Commission for any such investigation and hearing. The investigation shall consist solely of a review of the written submissions of the City Manager and employee to determine whether any individuals or documents should be subpoenaed by the Commission for the subsequent public hearing before the Commission ultimately to determine whether the City Manager acted in good faith for cause. Good faith for cause shall mean that the action was not arbitrary or capricious and was not made for political or religious reasons.
6. Public Hearing Conducted on Employee's Appeal. The Commission shall schedule a public hearing no less than ten (10) nor more than twenty (20) calendar days from the date of filing of the employee's written demand for an investigation. The Commission shall notify the City Manager and employee in writing at least five (5) calendar days prior to the date of the hearing, of the date, time and place of the hearing. Both parties shall be permitted to appear in person and by counsel and to present his or her case and may present evidence by testimony and documents and shall be permitted to cross-examine witnesses. A decision shall be rendered no later than ten (10) calendar days after the hearing.
7. Commission's Finding. The Commission may affirm the action taken by the City Manager if such action is supported by a preponderance of the evidence. If the Commission finds that the removal, suspension, demotion or discharge was made for political or religious reasons or was not made in good faith for cause, it shall order the immediate reinstatement or reemployment of such employee in the position or

employment from which such employee was removed, suspended, demoted, or discharged, which reinstatement shall, if the Commission in its discretion so provides, be retroactive and entitle such person to compensation and restoration of benefits and privileges from the time of such removal, suspension, demotion, or discharge.

After the hearing, in lieu of affirming the removal, suspension, demotion, or discharge, the Commission may modify the order of removal, suspension, demotion, or discharge by directing a suspension, with or without pay, for a given period and the subsequent restoration to duty or demotion in position or pay. No later than ten (10) calendar days after the hearing the Commission shall certify its findings in writing to the employee and the City Manager who shall enforce them.

8. Appeal. If such judgment or order be concurred in by the Commission or a majority thereof, the accused or governing body may appeal to the district court according to Nebraska Statutes.

SECTION 2. All other ordinances or parts ordinances in conflict with this ordinance are hereby repealed.

SECTION 3. This ordinance shall become effective upon its passage, approval and publication shall be in pamphlet form.

Roll call on the second reading of Ordinance No. 2802 with the following results:

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

Voting Nay: None.

Motion carried.

- The next matter before Council was consideration of Resolution No. 16-67 which will authorize staff to secure financing arrangements for the new ambulance purchase and the refinancing of the fire truck. The following background information was provided to Council:

[The City expects delivery of the new ambulance from Rocky Mountain Emergency Vehicles in mid-June. The purchase in the amount of \$178,500 was authorized by Council with Resolution 16-03 at the January 5, 2016 meeting. The City has a current lease for a fire truck with First National Bank which has a remaining principal balance of just under \$80,000.

The Finance Director contacted all of the local insured banks along with two brokerage houses to determine options for funding of the ambulance and possible refinancing of the fire truck. Five banks and both brokerage houses initially responded with terms as summarized in the attached. The most viable options included a loan from Sandhills State Bank, a lease from Wells Fargo Leasing, or a tax anticipation bond issue.

The Nebraska State Legislature enacted LB152 during the 2015 session which establishes the parameters for municipalities to borrow from local insured banks. The legislation stipulates that:

1. The City may borrow for the purchase of real or personal property, construction of improvements or refinancing of existing debt when,
  - a. The financing through traditional bond financing would be “impractical” or not completed within the time restraints facing the City or
  - b. When the direct financing would result in taxpayer savings over the traditional bond financing.
2. A public notice published prior to the meeting clearly indicates that a resolution authorizing the direct financing will appear on the meeting agenda.
3. The total amount of the indebtedness shall not exceed ten percent (10%) of the municipal budget of the City or approximately \$4.4 million.
4. The City considers proposals from multiple “financial institutions” (specifically excludes credit unions).

Staff is recommending that an application be made to Sandhills State Bank for a term loan in the amount of \$250,000 with a 10-year amortization at the taxable rate of 1.90% set for five years. This would combine the remaining fire truck loan with the ambulance funding. While minimum monthly payments of approximately \$2,900 would be required to amortize the loan in 10 years (assuming a consistent rate), it is recommended that the City continue to budget monthly payments of \$3,600 resulting in payoff within 6 years. This financing option allows the most flexibility in budgeting repayment, the least administrative effort and cost and a slightly lower overall interest cost with regular monthly payments.]

Councilman Feldges made a motion which was seconded by Councilman Korber-Gonzalez to approve Resolution No. 16-67 which follows in its entirety:

#### RESOLUTION NO. 16-67

*WHEREAS*, Nebraska LB152 authorizes cities of the First Class to borrow money from insured banks up to 10% of their annual budget upon the credit of the City and pledge the credit, revenue, and public property of the City for the payment thereof when borrowing through traditional bonds is not practical or cost-effective; and

*WHEREAS*, The City has determined that direct financing would result in taxpayer savings over the traditional bond financing; and

*WHEREAS*, a Public Notice was published on May 28, 2016 stating the City would be considering the direct borrowing for the purposes of financing the new ambulance and re-financing the fire truck; and

*WHEREAS*, The City issued requests for quotes and funding options and five financial institutions responded; and

*WHEREAS*, The preliminary offer which has been received from Sandhills State Bank for 10-year financing in the amount of \$250,000 at a fixed interest rate of 1.90% for five years appears to be the quote which is the most advantageous to the City.

*NOW, THEREFORE, BE IT RESOLVED* by the Mayor and Council of the City of Alliance, Nebraska, that the City of Alliance has determined that direct financing would result in taxpayer savings over traditional bond financing and is authorized to submit applications and enter into an Agreement in the amount of Two Hundred Fifty Thousand and No/100ths Dollars (\$250,000.00) to finance the purchase of an ambulance and the refinancing of the fire truck for ten years at a five-year fixed interest rate of 1.90% with Sandhills State Bank.

*BE IT FURTHER RESOLVED*, that the Mayor of the City of Alliance is authorized to sign, on behalf of the City, promissory notes, pledge agreements, and other necessary documents, and renewals or extensions thereof, for the purpose of evidencing a debt to Sandhills State Bank in the amount of Two Hundred Fifty Thousand and No/100ths Dollars (\$250,000.00) for the purchase of an ambulance and the refinancing of the fire truck for five years on the terms set forth herein.

Roll call vote with the following results:

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

Voting Nay: None.

Motion carried.

- The next item before Council was Resolution No. 16-68 which will approve the LB840 Application of Steph's Studio. Council was provided with the following background information:

[At its most recent meeting on May 26, the City's Economic Development Plan Application Review Committee (EDPARC) voted unanimously to recommend to City Council approval of a LB840 Application from Steph Mantooth for improvements to Steph's Studio at 210 Box Butte Avenue.

**PROJECT OVERVIEW:**

Total Project:	\$50,000
Equity Investment:	\$15,000 (30% Equity in Total Project)
Other Source Funding:	\$25,000
LB840 Assistance Sought:	\$10,000 (\$5000 Grant; \$5000 Loan)

## STAFF FINDINGS:

- ✓ In reviewing the application, staff found that Steph's Studio:
- ✓ Is a qualifying business (retail/commerce)
- ✓ Business activities are plan-eligible (Jobs created)
- ✓ Financial Assistance sought is within limits (Less than \$200,000)
- ✓ 10% equity investment is demonstrated (30% actual)

Therefore, staff further found that Steph's Studio is:

- ✓ Eligible for a Forgivable Loan (\$10,000 per each new full-time position)
- ✓ Eligible for a Non-forgivable Loan (\$10,000 per each new full-time position)
- ✓ Eligible for Small Business Assistance (\$5,000, forgivable)

Upon Council approval, the contract will be drawn up and is planned to be on the 6.21 agenda.]

Mayor Yeager made a motion to approve Resolution No. 16-68, which was seconded by Councilman Feldges. The resolution follows in full below:

## RESOLUTION NO. 16-68

*WHEREAS*, The voters of the City of Alliance approved an Economic Development Plan which had been adopted by the City Council in 2001 and in 2010, pursuant to the authority of Nebraska Revised Statutes 18-2701 through 18-2738;

*WHEREAS*, An Application Review Committee has been appointed by the City Council pursuant to law to review applications for assistance under the Economic Development Plan;

*WHEREAS*, The Economic Development Plan is funded by a portion of City sales tax which was also approved by the voters in 2001 and in 2007;

*WHEREAS*, The application of Steph Mantooth dba Steph's Studio has been received for assistance pursuant to the Economic Development Plan, and Steph's Studio is a qualifying business pursuant to the requirements of the Economic Development Plan;

*WHEREAS*, The Application Review Committee has approved the application of Steph Mantooth dba Steph's Studio and recommended to the Program Administrator that the project be approved;

*WHEREAS*, The Program Administrator has accepted the recommendation of the Application Review Committee, and recommends that the City Council approve the project;

*WHEREAS*, The Economic Development funds in the project requesting assistance are not the sole or primary funding source; and

*WHEREAS*, The City Council finds that Steph Mantooth dba Steph's Studio is a qualifying business and that this allocation of funds does not exceed the limitations of Section 18-2717 of the Nebraska Revised Statutes.

*NOW, THEREFORE, BE IT RESOLVED*, by the Mayor and City Council of Alliance, Nebraska, that the application of Steph Mantooth dba Steph's Studio for assistance from the Economic Development Fund pursuant to the Local Option Municipal Economic Development Act is hereby approved in the amount of \$10,000.00; of which \$5,000.00 may be forgivable.

*BE IT FURTHER RESOLVED*, that the Program Administrator proceed to negotiate and Economic Development Assistance Agreement between the City of Alliance and Steph Mantooth dba Steph's Studio and present the Agreement to the City Council for approval and execution by the Mayor on behalf of the City of Alliance, Nebraska.

Roll call vote with the following results:

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

Voting Nay: None.

Motion carried.

- Resolution No. 16-69 which will authorize the City to pay Downey Drilling, Inc. in the amount of \$32,797.55 to make necessary repairs to Water Well No. 5 was the next discussion item. Council was provided with the following information:

[On May 26, after receiving a report from Water Department staff Earl Winter and Ross Grant concerning an urgent problem with Water Well #5, the City Manager authorized proceeding with emergency corrective action. The total cost of the project is confirmed at \$32,797.55. The project is now underway and performance and payments bonds are in place.

#### Status Update

At the time that the well was pulled, staff discovered a total of 20—10' pieces of column with either corrosion holes or severe corrosion at the threads. The well was videoed, which revealed that all screen slots were  $\frac{3}{4}$  plugged. On Thursday, June 2, the screen was sonar-jetted a #5 charge, which is the strongest charge. At the time of this writing, the well is next scheduled to be bailed out and test pumped. The following step will be to acidize the well, and further clean the screen out. Subsequently, the well will then be test pumped to determine if there has been an improvement of production. Finally, the pump will then be set back at 250 feet, which is the top of the screen. Staff concurs with the opinion and recommendation of Downey Drilling that this process should take care of the electrolysis problem caused by dissimilar metals.