

# ALLIANCE CITY COUNCIL

REGULAR MEETING, THURSDAY, APRIL 17, 2007

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

The Alliance City Council met in a Regular Meeting, April 17, 2007 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 April 10, 2007. 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 Kusek opened the April 17, 2007 Regular Meeting of the Alliance, Nebraska City Council at 7:00 p.m. Present were Mayor Kusek, Council Members Dickenson, Benzel, Rowley, and Yeager. Also present were City Manager Caskie, City Attorney Dobrovlny and City Clerk Jines.

- Mayor Kusek made the Open Meetings Act announcement.
- The first item to come before Council was the Consent Calendar.

Motion by Councilman Dickenson, seconded by Councilman Yeager to approve the Consent Calendar which follows in its entirety:

**CONSENT CALENDAR - APRIL 17, 2007**

1.    Approval:    Minutes of the Regular Meeting, April 5, 2007.
2.    Approval:    Payroll and Employer Taxes for the period March 24, 2007 through April 6, 2007, inclusive; \$136,554.27 and \$9,693.04 respectively.
3.    Approval:    Claims against the following funds for April 2, 2007 through April 13, 2007; 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: \$554,220.84.

- 4. Approval: Issuance of Cemetery Certificates.

The East One Half (E1/2) of Lot Six (6), Section Eight (8), Block Twenty (20), Third Addition to the Alliance Cemetery to Myron E. Frerichs and Catherine Sattlethight.

The West One Half (W1/2) of Lot Thirty-five (35), Section Seven (7), Block Twenty (20), Third Addition to the Alliance Cemetery to Ronald J. Ogle and Barbara J. Ogle.

- 5. Approval: Resolution No. 07-47 granting Special Designated Liquor Licenses to Qujo Inc. for May 12, 2007 for an ABATE function and July 19-21, 2007 for Heritage Days.

- 6. Approval: The Request of the Route 385 Cruisers for the Annual Car Show and Rod Run events on Saturday, June 9<sup>th</sup>. The Club would once again like to host their dance at the Airport within a hangar, with alcohol being catered by the VFW. The car show will be held in Central Park and the Club is requesting the street closure of Yellowstone Avenue between 9<sup>th</sup> and 10<sup>th</sup> Streets and 9<sup>th</sup> Street between Yellowstone and Niobrara Avenues.

- 7. Approval: Issuance of the following contractor licenses:

- Repair and Maintenance . . . . . Bruce A. Cook
- General Contractor . . . . . Deb Smith dba Smith Steel Structures  
Ray Hashman & Jay Dubs dba R & J Industries Plus, Inc.  
Charles Weston & Tim Weston dba Weston Mobile Mix, LLC  
& Tim Weston Construction  
Freddie Serda dba L & S Contractors
- Class A Master Electrician . . . . . Emery W. Connor dba Connor Electric Services  
Michael W. Friesz dba Mike’s Electric  
Walter J. Montague dba ABC Electric of Chadron, Inc.
- Master HVAC & Journeyman Electrician . . . . . Ronald D. McDermott dba  
McDermott Electric
- Master HVAC & Gas Fitter . . . . . Greg Sanders dba Jack’s Refrigeration  
Ralph A. Wood dba Z & S Sheet Metal
- Journeyman HVAC . . . . . Jerad W. Wilson dba Z & S Sheet Metal

Master Plumber & Gas Fitter . . . . . Earl W. Tucker dba Tuck’s Plumbing & Supply

Master Plumber . . . . . Jon Aid dba J & M Plumbing, Inc.

Limited & Specialty . . . . . John Haas dba Garden Getaway

Sign . . . . . T. Eric Farrar dba Rosenbaum’s Signs  
Lamar Advertising of Casper

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

Mayor Kusek questioned the Telecom West billing for internet services charged to the MIS Department. City Manager Caskie indicated that the charges were for internet services throughout the City operations.

Mike McGinnis, 1512 West 3<sup>rd</sup> Street addressed Council on behalf of the Route 385 Cruisers regarding their request to use the City park for their annual Car Show.

Roll call vote with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

- The next order of business was the issuance of a General Contractors License to Ralph Yeager dba Yeager Construction.

Motion by Mayor Kusek, seconded by Councilman Dickenson to issue a General Contractors License to Ralph Yeager dba Yeager Construction.

Roll call vote with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley.

Voting Nay: None.

Abstaining: Yeager.

Motion carried.

- The presentation of proclamations for Arbor Day and Parliamentary Emphasis Month was the next item on Council’s agenda.

Councilwoman Rowley read the proclamation for Arbor Day which follows in its entirety:

## PROCLAMATION

WHEREAS, In 1872 J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

WHEREAS, This holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and

WHEREAS, Arbor Day is now observed throughout the nation and the world; and

WHEREAS, Trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife; and

WHEREAS, Trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products; and

WHEREAS, Trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community; and

WHEREAS, Trees are a source of joy and spiritual renewal; and

WHEREAS, The City of Alliance has been recognized as a Tree City USA by the National Arbor Day Foundation and desires to continue its tree-planting ways,

NOW, THEREFORE, the City Council of Alliance, Nebraska, does hereby proclaim April 27, 2007 as

### **ARBOR DAY**

in the City of Alliance, Nebraska, and I urge all citizens to support efforts to care for our trees and woodlands and to support our City's community forestry program; and

FURTHER, I urge all citizens to plant trees to gladden the hearts and promote the well-being of present and future generations.

The proclamation was presented to Jim Joule, representative of the Park and Tree Board and Park Superintendent Heather Hauptman.

Councilman Dickenson read the proclamation for Parliamentary Emphasis Month which follows in its entirety:

**PARLIAMENTARY EMPHASIS MONTH**

Whereas, The United States was founded on the principles of the rights and dignity of the individual, majority rule, and the deliberative process for governing and decision making; and

Whereas, Rules of order play an important part in the smooth functioning of the deliberative process whether at the local, state, or national level or in large or small private organizations; and

Whereas, Thomas Jefferson, the third President of the United States, born during the month of April, the author of the Declaration of Independence, and one of our nation's most distinguished statesmen, wrote the first manual on parliamentary practice in this country; published in 1801, the manual left an indelible mark on American history;

NOW, THEREFORE, in conjunction with the National Association of Parliamentarians and the American Institute of Parliamentarians, organizations dedicated to propagation of knowledge of parliamentary procedures, the members of the City Council of the City of Alliance do hereby proclaim April as

**PARLIAMENTARY EMPHASIS MONTH**

And call upon members of organizations and citizens in public and private meetings to promote the use of democratic processes and organization in meetings through the use of parliamentary practice.

IN WITNESS THEREOF, I have hereunto set my hand this 17<sup>th</sup> day of April in the year of the Lord Two Thousand and Seven.

The proclamation was presented to Wilma Hutchison.

- Ordinance No. 2567 authorizing the sale of Lot A, Replat of Lots 33, 34, 35, and 36, Block 5 Lakefield Addition, an Addition to the City of Alliance, Box Butte County, Nebraska to Rick G. Gonzalez was the next item for Council's consideration.

Motion by Councilman Yeager, seconded by Councilman Dickenson to approve Ordinance No. 2567 on first reading. City Clerk Jines read the ordinance by title which follows in its entirety:

**ORDINANCE NO. 2567**

AN ORDINANCE PROVIDING FOR THE SALE AND CONVEYANCE OF LOT A, REPLAT OF LOTS 33, 34, 35, AND 36, BLOCK 5, LAKEFIELD ADDITION, AN ADDITION TO THE CITY OF ALLIANCE, BOX BUTTE COUNTY, NEBRASKA, ACCORDING TO THE RECORDED PLAT THEREOF.

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

SECTION 1. The City of Alliance has received an offer from Rick G. Gonzalez, to purchase Lot A, Replat of Lots 33, 34, 35, and 36, Block 5, Lakefield Addition, an Addition to the City of Alliance, Box Butte County, Nebraska, according to the recorded plat thereof, Nebraska in the amount of \$7,288.25.

SECTION 2. The real estate is not used in the operation of public utilities, and is not a state armory for the use of the State of Nebraska or the State Armory, as provided in §16-201 R.R.S. Neb. 1943.

SECTION 3. The City Clerk shall cause notice of this sale to be published as required by law. If, within the time prescribed by law, a legally sufficient remonstrance against the sale has not been filed, the Mayor and City Clerk are by this ordinance authorized to execute and deliver to the purchaser the City's quitclaim deed for the herein described property upon payment of the purchase price provided for herein and in the purchase agreement.

Remonstrance against such sale is defined as a petition signed by legal electors of Alliance, Nebraska, equal in number to thirty percent (30%) of the electors voting at the last regular municipal election. Said petition shall be filed with the governing body of the City within thirty days (30) of the passage and publication of this Ordinance. In the event a remonstrance is received which is legally sufficient, said property shall not then, nor within one year thereafter, be sold.

SECTION 4. This ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

Motion by Councilman Dickenson, seconded by Councilman Benzel to suspend the statutory rule requiring three separate readings of Ordinance No. 2567.

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

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Roll call vote to approve Ordinance No. 2567 on final reading with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Mayor Kusek stated, “the passage and adoption of Ordinance No. 2567 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published.”

- The next item for Council’s review was Resolution No. 07-48 accepting the City of Alliance Employee Mission Statement. City staff participated in the development of the Mission Statement which was reviewed by the Management Team and recommended for approval.

Motion by Councilman Benzel, seconded by Councilman Yeager to approve Resolution No. 07-48 which follows in its entirety:

**RESOLUTION NO. 07-48**

*WHEREAS*, City of Alliance staff has met and discussed goals and objectives, for the purpose of formulating a mission statement; and

*WHEREAS*, At a recent Department Head meeting a proposed mission statement for City staff was approved; and

*WHEREAS*, City staff has requested City Council acknowledgment and acceptance of the staff’s mission statement; and

*WHEREAS*, The proposed City of Alliance Employee Mission Statement is:

The City of Alliance exists to foster community pride and enhance citizen opportunities through quality service, forward thinking, and fiscal responsibility. With trust, respect and equality as our guide we work to provide both residents and visitors with a safe, clean and attractive community and to promote the social, economic and cultural opportunities that will attract citizens to Alliance.

*NOW, THEREFORE, BE IT RESOLVED*, by the Mayor and City Council of Alliance, Nebraska, accepts the City of Alliance Employee Mission Statement as set forth herein.

Roll call vote with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

- Resolution No. 07-49 relating to a request from Friends of Carhenge for the procurement of the picnic shelter which was removed from Central Park for the museum expansion was the next item to be discussed by Council.

Motion by Mayor Kusek, seconded by Councilman Benzel to approve Resolution No. 07-49 which follows in its entirety:

**RESOLUTION NO. 07-49**

*WHEREAS*, The Friends of Carhenge have requested donation of a shelter which was removed from Cental Park due to the museum expansion, for erection at the Carhenge site north of Alliance; and

*WHEREAS*, The City Council finds that the shelter building is surplus property of no further use to the City of Alliance; and

*WHEREAS*, The Friends of Carhenge is a Nebraska non-profit corporation whose purpose is to maintain, develop, and promote Carhenge; and

*WHEREAS*, Visitors to Carhenge are likely to create a favorable economic impact upon the City of Alliance.

*NOW, THEREFORE, BE IT RESOLVED*, by the Mayor and City Council of Alliance, Nebraska, that the shelter building removed from Central Park, which is a 40 x 80 canopy-type shelter, is hereby donated to the Friends of Carhenge, a Nebraska non-profit corporation.

*BE IT FURTHER RESOLVED*, that prior to transfer, Friends of Carhenge must show a plan for moving and reconstruction of the shelter which is acceptable to City staff.

City Manager Caskie gave a brief explanation of the request by the Friends of Carhenge.

City Attorney Dobrovolny provided the following memorandum to Council regarding this matter:

[In June of last year I had sent a memo with regard to this donation request, which at that time was coincidental with moving of the actual building. There was an issue at that time as to whether or not the City had in fact participated in a grant regarding improvements at Carhenge.

At that time staff also considered whether Economic Development Funds through LB840 would be appropriate. Our LB840 program is tied primarily to job creation or retention and I do not think the Friends of Carhenge would qualify for consideration based on employment issues. Therefore, I do not think LB840 money is really an option.

I have done a little more research on this since last year and I think there is basically a three step analysis when someone is asking for City property in this way.

1. Is the property surplus?
2. Is the property that is being requested going to be put to a public purpose?
3. Does the City have the legal authority to make such a donation?

Whether or not the property is surplus is an analysis of whether the City needs it for current use, or would need it for a foreseeable use in the future. The structure is not

really what we might call perishable, therefore, it could be stored for a period of time and used later on in a different location. I believe the City Manager will be in a position to comment at the City Council meeting as to whether this building appears to be surplus in nature.

Public purposes defined in the Tax Statutes as property used to: (1) provide public services with or without cost to the recipient, including the general operation of government, public education, public safety, transportation, public works, civil and criminal justice, public health and welfare, developments by a public housing authority, parks, culture, recreation, community development, and cemetery purposes, or; (2) to carry out other duties and responsibilities conferred by law.

In another context, the Supreme Court of Nebraska has stated that “What is a public purpose, is primarily for the legislature to determine. A public purpose has for its objectives a promotion of the public health, safety, morals, security, prosperity, contentment, and the general welfare of all of the inhabitants. No hard and fast rule can be laid down for determining whether a proposed expenditure of public funds is valid as devoted to a public use or purpose. Each case must be decided with reference to the objects sought to be accomplished, and to the degree and manner in which that object defects the public welfare.” Haman v. Marsh, (1991) 237 Neb. 699.

The third part of the analysis, that is whether there is legal authority for the City to make donations of this type is not particularly clear. Although one might find that the property is surplus and that supporting tourism is a public purpose, this property was acquired at City expense and either an appropriate amount of consideration needs to be received in return for it, or some established legal basis either through Statute or other operation of law needs to support transferring the property to a private corporation with no consideration paid in return.

Because I have not found any specific statutory or interpretive legal authority that allows a donation of this nature, I do not recommend a donation without consideration. If the property is found to be surplus, then it can be sold at auction, or other competitive process which gives any bidder an opportunity. If the property sold for what would then be its fair market value, there is no need that the ultimate purpose be public. I think there is a process by which Carhenge could apply for a tourism grant through the County Tourism Board. I do not know as of this writing whether or not they have attempted to do that.]

City Manager Caskie suggested that a lease arrangement could be implemented to meet the criteria of reasonable value of the shelter. A percentage of sales from the gift shop located at Carhenge could be used to pay the City for the lease of the shelter.

Park Superintendent Hauptman came before Council and stated she felt the shelter could be considered surplus as there was no other place within the Park System she would like to see the structure. She would like to maintain the open spaces that we now have to allow children to run and play without barriers.

Councilman Benzel voiced concern that the shelter is not surplus, and could be put back into use within the park system.

Motion by Mayor Kusek, seconded by Councilwoman Rowley to postpone action on Resolution No. 07-49 until June 7, 2007.

Roll call vote with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

- The next item on Council's agenda was Resolution No. 07-50 adopting changes to the Public Library Policies. The Library Board is recommending approval of (1) deleting reference to family cards, as all cards are now issued to individuals, and (2) reference to a pay telephone as it was removed several years ago.

Motion by Councilman Benzel, seconded by Councilman Rowley to approve Resolution No. 07-50 which follows in its entirety:

#### **RESOLUTION NO. 07-50**

*WHEREAS*, The City of Alliance owns and operates a public library; and

*WHEREAS*, Policies for use of the library are established by the City Council; and

*WHEREAS*, The Library Board has proposed certain amendments to current library policies;  
and

*WHEREAS*, The City Council has reviewed the proposed changes to current library policies.

*NOW, THEREFORE, BE IT RESOLVED*, by the Mayor and City Council of Alliance, Nebraska, that the Alliance Public Library Regulations and Procedures are hereby amended as follows:

#### **PROCEDURES AND REGULATIONS:**

##### 8. Additional Rules/Regulations

- a. EMERGENCY EXITS - An emergency exit is located in the southeast corner of Meeting Room C, and one is located at the end of the corridor immediately outside the meeting rooms. Alarmed doors should be used ONLY in case of emergency.
- b. In the absence of library staff members, the Fire and Tornado Emergency

Procedures, which are included with the meeting room packets, should be followed.

- ~~c.~~ Pay telephone is located in gallery hallway just inside the east main entrance to the building. Emergency calls may be made by dialing the operator.
- cd.** Occupancy standards as set by the State Fire Marshal and posted on the Occupancy Load placards outside each room must be followed.
- de.** Hazardous materials including, but not limited to, paints, solvents, and explosives are prohibited.

(re-lettering to continue accordingly through paragraph 8).

*BE IT FURTHER RESOLVED*, those provisions of the Alliance Public Library Regulations and Procedures not consistent herewith are hereby repealed.

*BE IT FURTHER RESOLVED*, the Mission Statement and Policies of the Alliance Public Library are amended as follows:

#### VIII. USER PRIVACY POLICY

- A. The Alliance Public Library practices confidentiality in the reading and faxing of records. Therefore, as materials are returned to the library, all records concerning those books and their readers will be destroyed. No such records nor records of fax transmissions will be kept in any form.
- B. Children's reading is also confidential as follows:
  1. Small children who cannot yet write their own names and who take out materials on the parents' cards cannot be assured of privacy.
  2. Older children who are still wards of their parents, but have their own cards are assured of privacy unless their materials are lost or overdue, in which case parents may be billed for the materials.
- ~~C.~~ The privacy of those using family cards cannot be absolutely protected from other family members.
- CD.** Parents concerned about what their children are reading will be urged to accompany their children to the library to help in material selection.
- DE.** Any employee not adhering to this User Privacy Policy is subject to reprimand, demotion, or dismissal.
- EF.** This privacy policy is subject to VII and court orders issued thereunder.

*BE IT FURTHER RESOLVED*, those provisions of the Mission Statement and Policies of the Alliance Public Library not consistent herewith are hereby repealed.

Roll call vote with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

- The last items for Council's consideration were board appointments.

Motion by Councilman Dickenson, seconded by Councilman Benzel to appoint Eugene Vejraska to the Park and Tree Board for a term expiring February, 2010.

Roll call vote with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Motion by Councilman Dickenson, seconded by Councilman Yeager to appoint Terri McLaughlin to the Planning Commission for a term expiring December, 2009.

Roll call vote with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

- Mayor Kusek stated, "there being no further business to come before the Alliance City Council, the meeting is adjourned at 7:48 p.m."

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Dan Kusek, Mayor

(SEAL)

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Linda S. Jines, City Clerk

