

# ALLIANCE CITY COUNCIL

REGULAR MEETING, THURSDAY, JUNE 21, 2007

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

The Alliance City Council met in a Regular Meeting, June 21, 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 June 14, 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 June 21, 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 Dobrovolny and City Clerk Jines.

- City Manager Pam Caskie introduced Larry Miller as the Interim City Attorney who will begin his duties the first of July.
- Mayor Kusek introduced Kayla Batt, Miss Nebraska Outstanding Teen.
- The first item for Council’s review was the Consent Calendar.

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

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**CONSENT CALENDAR - JUNE 21, 2007**

1.    Approval:     Minutes of the Regular Meeting, June 7, 2007.
2.    Approval:     Payroll and Employer Taxes for the period May 19, 2007 through June 1, 2007, inclusive; \$156,980.67 and \$11,227.92 respectively.

- 3. Approval: Claims against the following funds for June 4, 2007 through June 4, 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: \$244,109.31.
  
- 4. Approval: The *Request for Reserved or Exclusive Use of City Streets* by the Alliance Booster Club for the Annual Big Blue BBQ. They are requesting the closure of 12<sup>th</sup> Street between Niobrara and Sweetwater Avenues between 2:00 p.m. and 6:00 p.m. on Sunday, August 19, 2007.
  
- 5. Approval: The *Request for Reserved or Exclusive Use of City Streets* by the City of Alliance for the Fountain Celebration. We are requesting the closure of Niobrara Avenue between 10<sup>th</sup> and 12<sup>th</sup> Streets starting at 5:00 p.m. through 11:00 p.m. on Tuesday, July 3, 2007.
  
- 6. Approval: The request to allocate encumbered funds from capital to the pool operating budget. These funds will be used to cover the costs of materials and extra chemicals necessary for the repair of the pool. The total amount requested is \$13,000.00.
  
- 7. Approval: The request to transfer Water Funds in the amount of \$7,704.00 from capital (08-046.10-463.060) to operating (08-046.10-439.340) for the lowering of the pumps in the new water wells.
  
- 8. Approval: Issuance of the following contractor licenses:  
  - Class B Electrician..... Craig Wyman dba Wyman Electric
  - Class A Master Electrician..... Greg Schlotthauer dba Schlotthauer Electric, Inc.
  - Contractor Electrician ..... Robert E. Hill dba Hill Top Electric
  - Repair & Maintenance . . . . . Circle J Glass  
Sean Tracy
  - Limited & Specialty..... Russell Rohnke dba Rainy Day Service  
Mike Zitterkopf dba M & E  
Circle J Glass
  
- 9. Approval: Issuance of a Cemetery Certificate to Frances V. Faber and David A. Faber for the West One Half (W1/2) Lot Eight (8), Section Ten (10), Block Twenty (20), Third Addition to the Alliance Cemetery.

Councilwoman Rowley questioned separate fuel charges by the Police Department. City Manager Caskie advised Council that Finance Director King is attending a conference and that she would direct Chief John Kiss to supply Council with an answer.

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.

Roll call vote with the following results:

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

Voting Nay: None.

Motion carried.

- The next item to be brought before Council was Ordinance No. 2571 which declares the possession or presence of firearms or dangerous weapons on various properties owned by the City of Alliance unlawful.

Motion by Councilman Benzel, seconded by Councilwoman Rowley to approve Ordinance No. 2571 on first reading. City Clerk Jines read the ordinance by title which follows in its entirety:

#### **ORDINANCE NO. 2571**

AN ORDINANCE DECLARING THE POSSESSION OR PRESENCE OF FIREARMS OR DANGEROUS WEAPONS ON **CERTAIN** CITY OF ALLIANCE PROPERTY TO BE UNLAWFUL, AND REPEALING EXISTING PROVISIONS OF CITY CODE NOT CONSISTENT HEREWITH.

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

SECTION 1. Cities of the First Class are permitted by law to regulate the possession of weapons for the protection of their citizens.

SECTION 2. The Alliance Municipal Code currently regulates the use of certain weapons within the City of Alliance.

SECTION 3. Chapter 6, Article 4 of the Alliance Municipal Code is hereby amended, by the addition of the sections following:

6-401.01      POSSESSION OF FIREARMS AND DANGEROUS WEAPONS IN CITY FACILITIES OR ON CITY REAL ESTATE, PROHIBITED.

- A. It shall be unlawful for any person to knowingly possess or cause to be present a firearm or other dangerous weapon on **City** real estate or any improvements thereon ~~owned by the City of Alliance~~ **at the following locations:**
- **Municipal Building Complex located at 320 Laramie, Alliance, Nebraska;**
  - **Fire Station located at 315 Cheyenne, Alliance, Nebraska;**
  - **Alliance Learning Center located at 1750 Sweetwater, Alliance, Nebraska;**
  - **Utility Facility located at 1313 West First Street, Alliance, Nebraska.**
- B. This section shall not apply to possession of a firearm or other dangerous weapon by:
1. An officer, agent, or employee of a state or a political subdivision thereof who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law, while in the lawful performance of official duties.
  2. ~~Any range operated, supervised, or maintained by the State of Nebraska or any political subdivision thereof~~ **An instructor or registered student** when in connection with an educational or training program.
  3. City authorized shows, performances and/or exhibitions displaying or using guns and/or knives.
  4. ~~A person properly licensed as a hunter on City real estate which is open to public hunting.~~

#### 6-401.02 DEFINITIONS.

For the purposes of Section 6-401.01 the following words shall have the following meanings:

- ~~a) City Real Estate and Improvements shall mean a building or part thereof owned or leased by the City of Alliance, Nebraska, or any other real estate, such as parks, recreational facilities, or other open areas. City real estate and improvements shall not include city streets as long as the firearm or weapon is lawfully transported in a vehicle.~~
- a b)** Dangerous weapon shall mean any firearm, stun gun, knife, switchblade knife, any gun which releases any propelled object by spring mechanism, compressed air or compressed gas, or any other instrument the use of which is intended or likely to cause death or bodily injury.
- b e)** Knife shall mean any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds, other than knives used for culinary purposes.
- c d)** Stun gun shall mean any handheld electronic device that is powered by an internal power source such as batteries, and that is capable of introducing an electrical current into the body of a person which when introduced to the body shall be capable of

disrupting a person's central nervous system and rendering the person temporarily incapable of normal functioning, for any period of time whatsoever. The electrical current may be introduced into the human body by means of direct pressure to the body from fixed electrodes on the electronic device and/or by one or more electrodes attached to a length of wire or other connection and which upon being fired from a firearm or any other mechanical device, strikes the human body and produces the reaction described herein.

SECTION 4. That current applicable City Codes of the City of Alliance, Nebraska, and all other ordinances or parts of ordinances, resolutions, policies, and procedures of the City of Alliance which are not consistent with the terms hereof, are hereby repealed.

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

City Attorney Dobrovlny indicated that the ordinance was changed to define those City facilities where weapons are prohibited as the Municipal Building, Fire Station, Learning Center and Utility Facility. City Manager Caskie advised Council that posting signs in the doors of these facilities might convey the impression of a problem with concealed weapons where there is none. Guy Hielscher, 6550 Otoe Road addressed Council indicating that he feels that the public entrances need to be posted as a courtesy. City Attorney Dobrovlny advised Council that the ordinance will prohibit open carry weapons as well as concealed weapons in the facilities listed.

Roll call vote with the following results:

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

Voting Nay: None.

Motion carried.

- The next item for Council's discussion was Ordinance No. 2570 relating to the rezoning of property located in the west part of Homestead Addition from RP-5 (Single Family Mobile Home) to R-1A (Single Family Residential).

Motion by Councilman Yeager, seconded by Councilwoman Rowley to approve Ordinance No. 2570 on second reading. City Clerk Jines read the ordinance by title which follows in its entirety:

**ORDINANCE NO. 2570**

AN ORDINANCE AMENDING THE MUNICIPAL CODE, ORDINANCE NO. 1890, SPECIFICALLY 10-302, THE ZONING DISTRICT MAP, BY AMENDING THE ZONING OF CERTAIN PARCELS OF LAND AS DESCRIBED HEREIN FROM SINGLE-FAMILY

## RESIDENTIAL MOBILE HOME (RP-5) TO SINGLE-FAMILY RESIDENTIAL(R1-A).

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

SECTION 1. The City of Alliance has zoning authority pursuant to law which provides procedures for changing the zoning designation of certain parcels of property.

SECTION 2. The application of the City of Alliance, Nebraska, has been received, which requests rezoning of certain parcels of real estate from Single-Family Residential Mobile Home (RP-5) to Single-Family Residential (R1-A). The description of the real estate requested to be rezoned is as follows:

Replat of Homestead Second Addition, Block 2, to the City of Alliance, Box Butte County, Nebraska, according to the recorded plat thereof;

and

Portions of Homestead Third Addition, to the City of Alliance, Box Butte County, Nebraska, according to the recorded plat thereof,

Block 3: Lots 20, 21

Block 4: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

Block 5: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10

Block 6: Lots 1, 2, 3, 4, 5

Block 7: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9

Block 8: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11

Block 9: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

SECTION 3. Notice has been mailed, published, and posted as required by law regarding the proposed change prior to a public hearing held by the Planning Commission. Six property owners were mailed notice. All responses were disinterested.

SECTION 4. After a public hearing held before the Alliance Planning Commission, the Planning Commission recommended approval of the proposed zoning.

SECTION 5. Notice has been given as provided by law for a public hearing by the Alliance City Council, and such a hearing was conducted on June 7, 2007.

SECTION 6. The City Council finds that the proposed zoning change is appropriate for consistent zoning within the zoning jurisdiction the City of Alliance, Nebraska, and is consistent with the comprehensive plan as adopted by the City of Alliance.

SECTION 7. The parcels described herein at paragraph number 2 of this ordinance are hereby rezoned from Single-Family Residential Mobile Home (RP-5) to Single-Family Residential (R1-A) as of the effective date of this ordinance.

SECTION 8. Changes to the authentic zoning district map on file in the Planning Commission office shall be made by city staff to reflect this change in zoning designation.

SECTION 9. This ordinance shall be in full force and effect after its passage, approval, and publication according to law.

City Manager Caskie explained the rezoning is being proposed to maintain the property value of the land. Passage of this ordinance will remove the availability of land to purchase for the installation of a traditional wheeled mobile home. Council asked if the City has received inquiries from individuals interested in purchasing land for the placement of mobile homes and City Clerk Jines indicated none; however there has been interest in purchasing lots for other types of housing.

Roll call vote with the following results:

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

Voting Nay: None.

Motion carried.

- The next item to be discussed by Council was Ordinance No. 2572 authorizing the sale of Lots 17 and 18, Block 10, Original Town to Richard T. Otto and Aimee A. Otto in the amount of \$7,000.00.

Motion by Mayor Kusek, seconded by Councilman Benzel to approve Ordinance No. 2572 on second reading. City Clerk Jines read the ordinance by title which follows in its entirety:

**ORDINANCE NO. 2572**

AN ORDINANCE PROVIDING FOR THE SALE AND CONVEYANCE OF LOTS 17 AND 18, BLOCK 10, ORIGINAL TOWN, 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 Richard T. Otto and Aimee A. Otto, husband and wife, to purchase Lots 17 and 18, Block 10, Original Town, Alliance, Box Butte County, Nebraska, according to the recorded plat thereof, in the amount of \$7,000.00.

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 escrow agent the City's warranty 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.

Mr. Rich Otto, 1203 Box Butte addressed Council requesting a decision be made at this meeting. He asked Council if the intent is to change zoning or code ordinances before the building is constructed. Council members indicated that was not their intent. Mayor Kusek verified that Mr. Otto will convey the concerns of Council to the architect. Mr. Otto requested a change in the Purchase Agreement in Paragraph 12 - Additional Conditions. He would like to change the word construction to purchase and delete the second section. Mayor Kusek asked if Mr. Otto would be amenable to removing Section 13 regarding the tax increment financing. City Manager Caskie indicated that Section 12 could be deleted and let the record show that there is no implied agreement of any commitment based on any plans or use. It will be reviewed at the time the building permit is applied for in accordance with applicable codes. Mr. Otto agreed and asked that Section 12 be changed as requested.

Motion by Mayor Kusek, seconded by Councilman Benzel to amend the sales contract by deleting Condition 1 of Section 12.

Roll call vote to amend the sales contract with the following results:

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

Voting Nay: None.

Motion carried.

### **REAL ESTATE PURCHASE AGREEMENT**

THIS AGREEMENT MADE AND ENTERED INTO by and between the City of

**Alliance, Nebraska**, a Municipal Corporation, hereinafter called the "**Seller**", and **Richard T. Otto and Aimee A. Otto, husband and wife**, hereinafter called the "**Buyer**", witnesseth:

1. The **Seller** hereby agrees to sell and convey to the **Buyer** and the **Buyer** agrees to purchase from the **Seller** the following described real estate, to-wit:

**Lots 17 and 18, Block 10, Original Town, Alliance, Box Butte County, Nebraska, according to the recorded plat thereof,**

subject to all easements, covenants and restrictions of record upon the following terms and conditions:

1. **PURCHASE PRICE.** As purchase price for the property, the **Buyer** agrees to pay to the **Seller** and the **Seller** agrees to accept from the **Buyer** the sum of Seven Thousand Dollars (\$7,000). The purchase price shall be paid in the following manner:

(a) The down payment sum of Five Hundred Dollars (\$500), paid by the **Buyer** to the **Seller** at the time of the execution and delivery of this Agreement, receipt of said sum is hereby acknowledged by the **Seller**.

(b) The balance of the purchase price, being Six Thousand Five Hundred Dollars (\$6,500) upon closure.

2. **POSSESSION.** The **Buyer** shall be entitled to possession of the property being sold hereunder upon closure.

3. **CLOSURE.** The date of closing on this Agreement shall be within five (5) business days after the expiration of the remonstrance period.

4. **DEED.** The **Seller** agrees to convey the real property being sold hereunder by Warranty Deed to the **Buyer** free and clear of all liens and encumbrances except easements, covenants, and restrictions of record. The **Seller** agrees that on or before the date of closing, the **Seller** shall, at the **Seller's** own cost and expense, execute said Warranty Deed and deliver the same to the **Buyer**.

5. **TITLE.** The **Seller** shall furnish the **Buyer**, at least seven (7) days prior to closing, with a commitment from a title insurance company for the issuance of a standard owner's, and, if appropriate, lender's policy of title insurance, said commitment showing marketable title in **Seller** free from all liens and encumbrances except easements, covenants and restrictions of record. The cost of the owner's and lender's title insurance policy shall be paid for by **Buyer**. In the event that the **Seller** does not have marketable title, the **Seller** shall have a reasonable time not to exceed thirty (30) days in which to cure the defects in title after the **Seller** has been notified thereof by the **Buyer** and the closing date shall be advanced accordingly as provided in Paragraph 3 of this

Agreement. If the **Seller** shall be unable to cure the defects in title within the time provided, this Agreement shall be terminated and any payment made hereunder shall be returned to the **Buyer** and all obligations or liabilities hereunder of either party hereto shall cease. The **Buyer** shall have the right, at **Buyer's** own expense, to cause the real property subject to this Agreement to be surveyed prior to closing.

6. **TAXES AND SPECIAL ASSESSMENTS.** The **Buyer** shall pay all real estate taxes on the property being sold hereunder for the calendar year 2007 and all prior years, if any. All such taxes shall be paid by the **Buyer** for all subsequent years. The **Seller** shall pay all special assessments currently levied or assessed on the property.

7. **APPROVAL OF AGREEMENT.** This agreement is subject to the approval by the City Council of Alliance, Nebraska in the manner and form as provided by law, and the closing of this transaction will accordingly be scheduled after adoption and publication of an appropriate ordinance, publication of notice of sale for three consecutive weeks, and the lapse of thirty (30) days within which period a remonstrance can be filed as provided by law. If no legally sufficient remonstrance is filed, **Buyer** shall pay the balance of the purchase price. If a legally sufficient remonstrance is filed, this agreement shall be null and void for all purposes and any payments made by **Buyers** shall be returned to **Buyers**.

8. **RISK OF LOSS.** Risk of loss or damage to the property being sold hereunder shall remain on the **Seller** until the date of closing and shall pass to the **Buyer** at the time of closing.

9. **SELLER'S REMEDIES ON BUYER'S DEFAULT.** In the event that **Buyer** refuses or fails to consummate this purchase, the **Seller**, at **Seller's** option, may retain all or any part of the down payment as liquidated damages for such refusal or failure, or utilize such other legal remedies as are available to **Seller** by reason of such failure including a remedy of special damages that contemplates, among other items, real estate commission on resale, and additional utility bills, real estate taxes, interest, title insurance costs, legal fees, and other out-of-pocket expenses of **Seller**. Time is of the essence of this contract and the conditions herein contained.

10. **BUYER'S REMEDIES ON SELLER'S DEFAULT.** In the event the **Seller** refuses or fails to consummate this Agreement, the **Buyer** may pursue any remedies provided by law or equity including, but not limited to, the enforcement of the terms and conditions of this Agreement by specific performance.

11. **REPRESENTATIONS.** The **Buyer** has personally inspected said premises hereinabove described and enters into this agreement solely on the basis of the **Buyer's** own visual inspection and investigation of the same and accepts the same in the exact condition in which they now are, except for the provisions of paragraph 14 below, and makes this agreement relying upon no representation or warranties of **Seller**, other than such as are set forth herein.

12. **ADDITIONAL CONDITIONS.**

Added conditions:

- In the event Buyer does not construct an office building on the property and elects to sell the property described herein, Seller shall have the right, exclusively, to purchase the property from Buyer at its fair market value the price paid by the Buyer for the Lots, namely \$7,000.00.

13. **TAX INCREMENT FINANCING.** Seller agrees to make a good faith effort to work with **Buyer** to obtain tax increment financing to finance the construction of the proposed office building.

14. **MAINTENANCE.** Seller shall, prior to closing, cause the soil to be stabilized by planting or surfacing so that dust and dirt do not blow from the site or erode from the site due to runoff. **Buyer** shall maintain the premises in good repair and in as good a condition as exists at the time of closing, normal wear and tear and acts of God alone excepted. Parking on the lots being conveyed hereby shall not be permitted, except incidental to construction, prior to occupancy of the completed building.

15. **NOTICES.** All notices given hereunder by either party shall be in writing and delivered personally to the parties to be notified or shall be sent by certified mail addressed to the parties as follows:

To **Seller:** City of Alliance  
 PO Box D  
 Alliance, NE 69301

To **Buyer:** Richard T. Otto and Aimee A. Otto  
 1203 Box Butte Avenue  
 Alliance, NE 69301

or such other address as either party shall designate to the other in writing, and notice given by mail, as aforesaid, shall be sufficient service thereof, and shall be deemed given as of the date when deposited postage prepaid in any United States Postal Service installation.

16. **BENEFITS.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties hereto.

17. **ASSIGNMENT OF CONTRACT.** No assignment of this Agreement or any of the rights, equity or interest therein or of the premises by the **Buyer** shall be valid without the consent of the **Seller**. **Buyer** shall be permitted to make assignment to entities wholly owned by Buyers or Buyer's spouse. Any expense incurred by **Seller** in connection with granting such consent shall be paid to **Seller** by **Buyer**. No assignment of this Agreement by **Buyer** shall operate to release, discharge or modify the liability of **Buyer**.

18. **ENTIRE AGREEMENT AND MODIFICATION.** This Agreement constitutes the entire agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties regarding the subject matter hereof. This Agreement shall not be modified, amended, altered or changed except by a written document agreed to and signed by the parties hereto.

19. **SURVIVAL.** All agreements, covenants, undertakings, representations, and warranties of the **Seller** and the **Buyer** extended hereunder shall be deemed to continue and survive closing hereunder.

20. **INVALIDITY.** Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition, without invalidating the remainder of this Agreement.

21. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties have hereunto set their hand on June \_\_\_\_, 2007.

**SELLER:**

**BUYER:**

**City of Alliance, Nebraska  
A Municipal Corporation**

\_\_\_\_\_  
**Dan Kusek, Mayor**

\_\_\_\_\_  
**Richard T. Otto**

\_\_\_\_\_  
**Pamela S. Caskie, City Manager**

\_\_\_\_\_  
**Aimee A. Otto**

Motion by Councilwoman Rowley, seconded by Councilman Benzel to suspend the statutory rule requiring three separate readings of Ordinance No. 2572.

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. 2572 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. 2572 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published.”

- The second reading of Ordinance No. 2569 amending the Alliance Municipal Code at Chapter 2, Article 11 regarding Unarmed Sports was the next item for Council’s review.

Motion by Councilwoman Rowley, seconded by Mayor Kusek to approve Ordinance No. 2569 on second reading. City Clerk Jines read the ordinance by title which follows in its entirety:

**ORDINANCE NO. 2569**

AN ORDINANCE RESTRICTING MIXED MARTIAL ARTS AND OTHER UNARMED SPORTS ACTIVITIES WITHIN THE LAW ENFORCEMENT JURISDICTION OF THE CITY OF ALLIANCE, AND REPEALING EXISTING PROVISIONS OF CITY CODE NOT CONSISTENT HEREWITH.

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

SECTION 1. The Nebraska Legislature has recently passed LB 471, which placed mixed martial arts under the control of the Nebraska State Athletic Commissioner.

SECTION 2. The Alliance City Council finds that sports such as mixed martial arts and other similar activities should be allowed under only certain controlled situations to provide for public safety and to protect the public interest.

SECTION 3. The Alliance Municipal Code is hereby amended at Chapter 2, by adding an Article 11, consisting of the following sections:

ARTICLE 11

UNARMED SPORTS

2-1101. UNARMED SPORTS; RESTRICTIONS

Unarmed sports, including mixed martial arts as defined under Nebraska law, in which competitors seek to achieve dominance over the other by using physical techniques, including, but not limited to, grappling, kicking, and striking, are

prohibited in the law enforcement jurisdiction of the City of Alliance, unless the sports promoters and contestants are properly registered, licensed, and permitted by the Nebraska State Athletic Commissioner, pursuant to Nebraska law at Chapter 81, Article 8, and all applicable regulations as may exist from time to time.

#### 2-1102. UNARMED SPORTS; EXCEPTIONS

Section 2-1101 shall not apply to: a) Activities occurring under the direct supervision of a martial arts instructor at a place of training or other types of instructor-student, or student-student contact occurring under the supervision of an instructor at a place of training. b) Activities which are excepted by Section 81-8,129 of the Nebraska Revised Statutes, as amended by LB 471, passed May 10, 2007 by the Nebraska Legislature.

#### 2-1103. UNARMED SPORTS; CONDUCTED

Unarmed sports meeting the definition of 2-1101 may be conducted within the law enforcement jurisdiction of the City of Alliance only after issuance of a Conditional Use Permit, by the City Council, to the promoter and owner of the property on which the event is conducted. The process for obtaining a Conditional Use Permit provided by the Alliance Municipal Code shall be followed, by anyone wishing to conduct an unarmed sports activity except that review by the Planning Commission is not required. A separate permit shall be required for each event.

#### 2-1104. UNARMED SPORTS; ALCOHOLIC BEVERAGES PROHIBITED

Alcoholic beverages may not be served, and may not be present, at any unarmed sports activity meeting the definition of 2-1101.

#### 2-1105 UNARMED SPORTS; LOCATION

Unarmed sports shall be permitted only in Zoning Classification C-3.

#### 2-1106 UNARMED SPORTS; EMERGENCY MEDICAL SERVICES

All events which occur pursuant to this Ordinance shall be conducted only when emergency medical services are on a standby status. The holder of the permit for the event shall pay the cost of the standby emergency medical services.

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

SECTION 5. This ordinance shall be in full force and effect from and after its approval,

passage, and publication according to law.

City Attorney Dobrovolny explained the proposed amendments which stipulate that unarmed sports will only be allowed in areas zoned (C-3) Highway Commercial, and emergency medical services will be required to be on standby. The State Athletic Commission currently mandates a ring-side doctor. Mayor Kusek asked if the zoning designation could be waived if there was interest in conducting an event in an area not currently zoned (C-3) Highway Commercial through a Special Use Permit. City Attorney Dobrovolny indicated that a change would have to be made to the Alliance Municipal Code. Fire Chief David McCarty recommended the (C-3) Highway Commercial restriction due to access to arterial traffic routes, the availability of large buildings, and adequate off-street parking. The ordinance will not adversely affect competition between martial arts instructors and their students as long as it is part of their instructional program and not a commercial event.

Motion by Mayor Kusek, seconded by Councilwoman Rowley to amend Ordinance No. 2569 by removing Section 2-1105 and incorporating the recommended highlighted language and deleting the strikeout language.

Roll call vote on the amendment with the following results:

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

Voting Nay: None.

Motion carried.

Councilman Benzel inquired if alcohol could be served at the events. City Attorney stated alcohol is prohibited as stated in 2-1104.

Roll call vote on the second reading of amended Ordinance No. 2569 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. 07-79 granting a Special Designated License to The Gathering Spot, 213 Box Butte Avenue for a beer garden to be located behind their premises on the parking lot of Ken and Dale's Restaurant.

Motion by Mayor Kusek, seconded by Councilman Dickenson to approve Resolution No. 07-79 which follows in its entirety:

**RESOLUTION NO. 07-79**

*WHEREAS*, The City Clerk has received an application of D-Head, Inc., d/b/a The Gathering Spot, for a special designated license pursuant to the Nebraska Liquor Control Act; and

*WHEREAS*, Said act requires the approval of applications by the local governing body prior to such a license being issued by the Nebraska Liquor Control Commission; and

*WHEREAS*, The application appears to be complete and meet the statutory requirements.

*NOW, THEREFORE, BE IT RESOLVED*, by the Mayor and City Council of Alliance, Nebraska, that the Application for Special Designated License of D-Head, Inc., d/b/a The Gathering Spot for July 19, 20, and 21, 2007 is hereby approved for the premises described in the application, and the City Clerk shall inform the Nebraska Liquor Control Commission of the approval of the application, and the Clerk shall deliver the license issued by said Commission to the permittee upon receipt of the required fees.

*BE IT FURTHER RESOLVED*, one entrance to the additional licensed premises shall be allowed, on the north side directly accessing the alley.

*BE IT FURTHER RESOLVED*, that the location and times for the event to occur on City property, and otherwise, are hereby approved.

City Manager Caskie explained that two open gates would allow opportunity for a large amount of cross traffic between beer gardens which could create a policing issue. She proposed the allowance of a south gate and elimination of the north gate. Councilman Benzel expressed concern for the isolation of BowlMor Lounge by closing the alley to foot traffic. Dennis Meng addressed Council indicating that the gates would be manned and pedestrians would be allowed to pass through his gated beer garden to access businesses located to the south provided that they have appropriate identification. Mary Ortmann, 924 E. 10<sup>th</sup> addressed Council on behalf of BowlMor Lounge. She expressed concern regarding blocking the alley and how that will affect their business. BowlMor Lounge would like to see two gates to allow people to move from one beer garden to another.

Motion by Mayor Kusek, seconded by Councilman Yeager to amend Resolution No. 07-79 by removing the first "Be It Further Resolved."

Roll call vote on the amendment with the following results:

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

Voting Nay: None.

Motion carried.

Roll call vote on Resolution No. 07-79 as amended with the following results:

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

Voting Nay: None.

Motion carried.

- Resolution No. 07-80 approving a month to month Building Lease with Dale Johnson dba PST Automotive for a portion of Building No. 3219 located at the Alliance Municipal Airport was the next item on Council's agenda.

Motion by Councilman Dickenson, seconded by Councilman Yeager to approve Resolution No. 07-80 which follows in its entirety:

**RESOLUTION NO. 07-80**

*WHEREAS*, The City of Alliance owns numerous buildings on the municipal airport grounds which are available for lease; and

*WHEREAS*, Dale Johnson has proposed to lease a portion of Building 3219 on a month-to-month basis; and

*WHEREAS*, The City Council finds that the proposed lease is appropriate for airport purposes and should be approved.

*NOW, THEREFORE, BE IT RESOLVED*, by the Mayor and City Council of Alliance, Nebraska, that the lease for Building 3219 on the Alliance Municipal Airport grounds to Dale Johnson is hereby approved, and the Mayor and City staff are authorized to sign the lease on behalf of the City of Alliance.

Roll call vote with the following results:

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

Voting Nay: None.

Motion carried.

- The next item to be presented to Council was Resolution No. 07-81. This resolution accepts the Airport Wildlife/Security Fence Project as built and authorizes the final payment to be made.

City Manager Caskie advised Council that written authorization has been received from the Nebraska Department of Aeronautics but not from the Federal Aviation Administration which requires that the agenda item be tabled.

Motion by Councilman Yeager, seconded by Councilman Benzel to table Resolution No. 07-81 until written receipt of confirmation is approved from the Federal Aviation Administration.

Roll call vote with the following results:

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

Voting Nay: None.

Motion carried.

- The next item for Council's discussion was Resolution No. 07-82 authorizing staff to enter into negotiations with the State of Nebraska and the Burlington Northern Santa Fe Railway to lower the City's costs for the Third Street Underpass Project.

Motion by Councilman Benzel, seconded by Councilman Dickenson to approve Resolution No. 07-82 which follows in its entirety:

#### **RESOLUTION NO. 07-82**

*WHEREAS*, The Burlington Northern Santa Fe Railway and the Nebraska Department of Roads are planning a project to reconstruct the Third Street underpass; and

*WHEREAS*, The City of Alliance has received a proposed agreement which provides for a 20% share of project costs to be paid by the City; and

*WHEREAS*, This level of project costs being paid by the City will significantly impact currently planned street improvement projects in the City by use of the City's Surface Transportation Program funds.

*NOW, THEREFORE, BE IT RESOLVED*, by the Mayor and City Council of Alliance, Nebraska, that City staff is directed to enter negotiations with the State of Nebraska and the Burlington Northern Santa Fe Railway to lower the City's costs for the Third Street underpass project.

City Engineer Richard Cayer advised Council that BNSF would like to have a minimum of three tracks over the underpass. Any cost incurred to accommodate additional tracks would be the sole responsibility of the railroad. The City will participate in the basic structure.

Roll call vote with the following results:

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

Voting Nay: None.

Motion carried.

- Resolution No. 07-83 adopting the Capital Improvement and Capital Equipment Plans for fiscal year 2007-2008 was the next item for Council's review.

Motion by Councilwoman Rowley, seconded by Councilman Dickenson to approve Resolution No. 07-83 which follows in its entirety:

**RESOLUTION NO. 07-83**

*WHEREAS*, The City of Alliance staff has completed a process of working with various City Departments, the Planning Commission, and City Council, to compose a Capital Improvements/Capital Equipment Plan for the upcoming fiscal year, 2007-2008; and

*WHEREAS*, The City Council has received the recommendation of the Alliance Planning Commission with regard to the current proposed Capital Improvements/Capital Equipment Plan; and

*WHEREAS*, The City staff will use the Capital Improvements/Capital Equipment Plan in the preparation of the annual appropriations bill or the City budget each year.

*NOW THEREFORE BE IT RESOLVED*, by the Mayor and Council of the City of Alliance, Nebraska, that the proposed Capital Improvements/Capital Equipment Plan, which is currently before the City Council and which has been approved and recommended by the Planning Commission, is hereby adopted as the Capital Improvements/Capital Equipment Plan for the City of Alliance, Nebraska, for the 2007-2008 fiscal year.

City Manager Caskie inquired if Council would like to utilize laptop computers or remove that item from the Capital Equipment list. By consensus, the laptop computer purchase will be moved to the next fiscal year.

Roll call vote with the following results:

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

Voting Nay: None.

Motion carried.

- The last item on Council's agenda was a board resignation.

Motion by Councilman Dickenson, seconded by Councilman Benzel to regretfully accept the resignation of John D. Dietrich from the Alliance Planning Commission.

Roll call vote with the following results:

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

Voting Nay: None.

Motion carried.

- Mayor Kusek extended a thank you on behalf of Council to City Attorney Leo Dobrovlny for his 17½ years of service.
- Mayor Kusek announced the re-dedication of the Central Park Fountain on July 3, 2007 at 6:00 p.m.
- Mayor Kusek stated, "there being no further business to come before the Alliance City Council, the meeting is adjourned at 8:53 p.m."

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Dan Kusek, Mayor

(SEAL)

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Linda S. Jines, City Clerk