

December 18, 2018

# ALLIANCE CITY COUNCIL

REGULAR MEETING, TUESDAY, DECEMBER 18, 2018

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

The Alliance City Council met in a Regular Meeting December 18, 2018 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 December 12, 2018. 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, had been provided 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 Dafney opened the December 18, 2018 regular meeting of the Alliance, Nebraska City Council at 7:01 p.m. Present were Mayor Dafney and Council Members Mischnick, Bentley and Reynolds. Also present were City Manager Kuckkahn, Finance Director Waggener, City Attorney Ediger and City Clerk Jines.

- Mayor Dafney read the Open Meetings Act Announcement.
- The first action by Council was a motion made by Mayor Dafney to excuse Councilman Jones from the meeting. The motion was seconded by Councilman Mischnick.

Roll call vote with the following results:

Voting Aye: Dafney, Bentley, Mischnick, Reynolds.

Voting Nay: None.

Motion carried.

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- The Consent Calendar was now before Council for consideration. A motion made by Councilman Mischnick and seconded by Councilman Bentley to approve the Consent Calendar as follows:

CONSENT CALENDAR – DECEMBER 18, 2018

1. Approval: Minutes of the Regular Meeting, December 4, 2018.
2. Approval: Payroll Costs for the period November 17 through 30, 2018; \$326,112.45.
3. Approval: Claims against the following funds for the period of November 28 through December 12, 2018: 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; \$1,298,023.50.
4. Approval: Update to the Alliance Volunteer Fire Department Roster by removing Jill Andersen and Madisen Morrison.
5. Approval: To submit our annual Tree City USA 2018 Application for Certification. The City of Alliance has met the requirements to make the submittal.
6. Approval: Resolution No. 18-139 approving the 2019 Maintenance Agreement No. 3 with the Nebraska Department of Transportation. This Agreement defines the maintenance responsibilities of the City and NDOT for State highways within the city limits.
7. Approval: Resolution No. 18-140 entering into a Contract with L & J Cleaning, Inc. of Alliance, NE in the amount of \$7,250 annually for janitorial services for the Alliance Airport Terminal. The Contract has been prorated for a seven month period to allow for the bidding and/or renewal to coincide with the City's other janitorial services.
8. Approval: Resolution No. 18-141 granting a Special Designated (Liquor) License to the Alliance Volunteer Fire Department Inc. for the Bosses' Night Fundraising Event. The event will be held at the Alliance Area Fire/Emergency Center, 315 Cheyenne Avenue, the evening of Friday, February 1, 2019 between 5:00 p.m. and 11:00 p.m.
9. Approval: Resolution No. 18-142 will enter into a Sign Lease with Lyle Heine for a highway sign for the advertisement of Carhenge. This lease is a renewal and is for a one year period with an automatic renewal each year unless either party provides for termination.
10. Approval: Resolution No. 18-143 will enter into a Sign Lease with Norman W. Nuss for a highway sign for the advertisement of Carhenge. This lease is a renewal and is for a one year period with an automatic renewal each year unless either party provides for termination.
11. Approval: Resolution No. 18-144 will enter into a Sign Lease with Sammie V. Stuart-Executor for a highway sign for the advertisement of Carhenge. This lease is a renewal and

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is for a one year period with an automatic renewal each year unless either party provides for termination.

12. Approval: Resolution No. 18-145 will enter into a Sign Lease with Craig L. Barthel and Mary A. Barthel for a highway sign for the advertisement of Carhenge. This lease is a renewal and is for a one year period with an automatic renewal each year unless either party provides for termination.
13. For Your Information: The City has received the Official Notice of Amended Renewable Distributed Generation Policy from NMPP Energy.

NOTE: City Manager Kuckkahn 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: Dafney, Mischnick, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- The requests of Scott Bolinger to amend the Municipal Code regarding Unarmed Sports was next for Council.

Mr. Larry (Scott) Bolinger, 507 Niobrara Avenue, Alliance requested Council to change some of the language within Section 18 of the Alliance Municipal Code. He requested the first sentence in Sections 18-413 and 18-415 be changed to “Unarmed combat sports events/competitions, such as boxing and mixed martial arts (as defined under State law) which are regulated by the Nebraska State Athletics Commission, in which competitors seek . . .” Mr. Bolinger also requested that Section 18-416 be changed to allow the serving of alcohol at these events when a proper liquor license has been obtained.

Council thanked Mr. Bolinger for his input and requested staff to compare our language to the current State Statutes and report back with any recommended changes.

- Ordinance No. 2877 which modifies the franchise regulations for cable television systems was next before Council on first reading. The following information was provided for Council:

[The City of Alliance Code provides for cable television regulation in Chapter 18, Article XI of the Muncipal Code (the “Cable Code”). Franchises are then issued to Cable Operators pursuant to the Cable Code. The City currently has two cable television providers: Charter Communications and Allo Communications. In

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addition, residents have options for television programming from Dish Network and Direct TV, along with other video services offered over the internet.

The City last modified the Cable Code in December 2015, when Allo was awarded its Cable Franchise. Charter has had a Cable Franchise for many years with its last franchise expiring on April 30, 2012. That Franchise was extended until December 31, 2015. Negotiations have continued since that time for a renewal of Charter's Franchise while Charter has continued to operate under the expired Franchise. The City Council previously held a public hearing and gave opportunity for citizens to have input on Charter's performance. No one appeared to speak on the matter. The City has fulfilled all procedural requirements necessary in order to take action on Charter's request.

The 2015 modification of the Cable Code contained changes with respect to the City's regulation of Cable Operators. The proposed Ordinance provides further changes, all of which reflect the current state of the telecommunications industry. Not too long ago, cities were imposing all sorts of requirements on Cable Operators, to include protection of the City rights of way, technical standards, customer service standards, and billing practice requirements. Over the years, Congress and the Federal Communications Commission have pre-empted much of what cities can regulate, and provided for statutory and regulatory requirements for all Cable Operators, regardless of location. As a result, there is no longer the need for much of the regulation that has traditionally been included in Cable Codes and Franchises.

The FCC also made a determination that a City's right to regulate rates is minimal, and that competition should control the amount charged to customers. In order to promote competition, the FCC decided to promote dish services and mandated that cities could not control dish programming providers, other than to regulate where a dish could be located on a building. As a result, a City cannot collect franchise fees or sales tax on dish service. On the other hand, a City can charge up to a 5% franchise fee along with City sales tax on a Cable Operator for Cable Television Service. The result is that the more customers receiving dish programming within the City, the less that the City gets for franchise fees and sales tax. Those franchise fees and sales tax are important sources of revenue for the City. As a result, in negotiating the revised Cable Code and the new Charter Franchise, City staff's approach was to provide for less regulation and restriction on a Cable Operator's business operations, while at the same time protecting the use by Cable Operators of the City's right of way. From a practical standpoint, the City does not have the staff or ability to tell a Cable Operator how to run its business. But, the City does have the right and the duty to make sure that a Cable System does not unreasonably interfere with City property (streets, alleys and utility easements) or to cause issues with how and where cable lines are located. Charter does have a separate agreement with the City which allows Charter to attach to City owned electric poles, and Charter pays a separate fee for its attachments. That separate agreement is not impacted by the revised Cable Code or the proposed Franchise.

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There are two significant changes from the current Cable Code which are included in the revision, for which the Council should give consideration:

The current Cable Code requires a Cable Operator to have a local office. Although Charter has indicated that it does not intend to close its Alliance office, it wants its options open for an alternative. Please see Section 18-514(b) of the proposed Cable Code Ordinance.

City Staff and Charter have had considerable discussion concerning the City's PEG Channel (public, educational or governmental). We inquired of the Alliance Public Schools and they have an agreement with Allo for telecommunications services, so the educational component is not an issue for them. Currently, the City's only potential use for a governmental channel is to provide for the broadcast of City Council meetings. Charter's position is that demands on its system for bandwidth make it difficult to provide a little-used PEG Channel, and has requested the provisions that are included in Section 18-523, where a PEG Channel will be made available if the City provides sufficient programming (12 hours per day). Given the fact that this is not likely to happen, the PEG Channel would likely be abandoned and the bandwidth used by Charter for other purposes. Previously, the City Council approved Allo's proposal that Council meetings be taped and then included in their "on demand" offerings. City staff is also exploring having taped Council meetings broadcast on the City's website.

Jeremiah Blake, who is Charter's Director of Government Affairs for Nebraska, will attend the meeting to discuss Charter's operations in the City and to answer questions.]

A motion was made by Councilman Mischnick, seconded by Councilman Bentley to approve the first reading of Ordinance No. 2877. City Clerk Jines read the ordinance by title which follows in its entirety:

#### ORDINANCE NO. 2877

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

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

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

**18-501. Purpose.**

The purpose of this Article is to:

- (a) establish a local policy concerning cable television;
- (b) establish Franchise procedures and standards which encourage the growth and development of Cable Systems which assure that Cable Systems are responsive to the needs and interests of the City;
- (c) establish guidelines for the exercise of local authority with respect to the regulation of Cable Systems;
- (d) establish an orderly process for Franchise renewal which protects Cable Operators against unfair denials of renewal where an Operator's past performance and proposal for future performance meet the standards set by the FCC and this Article;
- (e) promote competition in cable communications and minimize unnecessary regulations that would impose undue burdens on Cable Systems;
- (f) provide for access and inspection of a Cable Operator's records in order to monitor compliance with local, State and Federal laws, and any Franchise agreement;
- (g) enforce customer service standards;
- (h) provide a construction and installation policy for a Cable Operator's system;
- (i) provide for the health, safety and welfare of the citizens of the City in light of the Cable Operator's construction, operation and maintenance;
- (j) provide for emergency override capability, so that citizens of the City may be warned of a potential, imminent, or actual Emergency situation that exists in the area;
- (k) create a procedure for collecting and monitoring Franchise Fees; and
- (l) create a default and revocation procedure for Cable Operators.

**18-502. Definitions.**

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

- (a) "Affiliate" means another person or Entity who owns or controls, is owned or controlled by, or is under common ownership or control with, the person or Entity.

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- (b) "Applicant" means a person or Entity submitting an application or proposal to the City for a Franchise to operate a Cable System under the terms and conditions of this Article and any State or Federal regulations.
- (c) "Auxiliary Equipment" means equipment supplied by a Cable Operator which enhances or assists in the reception or provision of Cable Service.
- (d) "Basic Cable Service" means any Service Tier which includes the retransmission of local television broadcast signals.
- (e) "Cable Act" means the Cable Communications Policy Act of 1984, as amended, which is codified as 47 U.S.C. §§ 521, et. seq., or any future federal legislation concerning the subject matter provided for in the Cable Act.
- (f) "Cable Operator" means any person or Entity which:
- (1) provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in that Cable System; or
  - (2) otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System.
- (g) "Cable Service" means:
- (1) the one-way transmission to Subscribers of: (i) Video Programming or (ii) Other Programming Service; and
  - (2) Subscriber interaction, if any, which is required for the selection or use of Video Programming or Other Programming Service.
- (h) "Cable System" means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes Video Programming, and which is provided to multiple Subscribers within the City; provided, however, this shall not include:
- (1) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations;
  - (2) a facility that serves Subscribers without using any Public Way;
  - (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Cable Act, except that the facility shall be considered a Cable System (other than for purposes of § 621(c) of the Cable Act) to the extent the facility is used in the transmission of Video Programming directly to Subscribers; unless the extent of such use is solely to provide interactive on-demand services.

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- (4) an open video system that complies with § 653 of the Cable Act.
  - (5) any system exempted under the Cable Act.
- (i) “Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.
- (j) “Charge” means a one-time or non-regularly occurring cost paid by the Subscriber, and which is associated with the installation, maintenance, service or repair of the Cable Service.
- (k) “City” means the City of Alliance, Nebraska and includes any areas annexed to the City after this date. “Council” means the City Council of the City of Alliance. “Mayor” means the Mayor of the City of Alliance. “City Manager” means the City Manager of the City of Alliance.
- (l) “Emergency” means an imminent, impending, or actual natural or humanly induced situation where the health, safety or welfare of all, or a representative portion, of the residents of the City is threatened. An Emergency (by illustration) may include a snowstorm, flood, tornado, severe thunderstorm, hazardous waste infiltration, petroleum, munitions or nuclear explosion, or aircraft crash.
- (m) “Easement” means and shall include any public easement or other compatible use created by dedication or by other means, to the City for public utility or other purposes including cable television. “Easement” shall include a private easement used for the provision of Cable Service.
- (n) “Entity” shall mean a partnership, joint venture, corporation, limited liability company or such other form of conducting business authorized by State law.
- (o) “FCC” means the Federal Communications Commission or any successor governmental entity.
- (p) “Franchise” means the authorization issued by the City which authorizes a non-exclusive right to construct, operate and maintain a Cable System within the City.
- (q) “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by the City on a Cable Operator or Subscriber, or both, solely because of their status as such. “Franchise Fee” does not include:
- (1) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their services but not including a tax fee, or assessment which is unduly discriminatory against Cable Operators or Subscribers);

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- (2) Agreed upon capital costs incurred by the Cable Operator for PEG, or governmental access facilities;
  - (3) requirements or charges incidental to the awarding or enforcing of a Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or
  - (4) any fee imposed under the copyright laws of the United States.
- (r) "Gross Revenue" means any revenue, as determined in accordance with generally accepted accounting principles, received by a Grantee from the operation of a Cable System within the City. Gross Revenue does not, however, mean (i) any taxes, fees or assessments collected by a Cable Operator from Subscribers for pass-through to a government agency (including sales taxes, Franchise Fees or FCC user fees); (ii) unrecovered bad debt or bona fide credits, refunds and deposits paid to Subscribers; (iii) revenues from activities exempted under the Cable Act or by the FCC, and (iv) PEG Channel Support recovered from Subscribers.
- (s) "Other Programming Service" means information that a Cable Operator makes available to all Subscribers generally.
- (t) "PEG Channel" means a public, educational or governmental Channel which is carried on a Cable System.
- (u) "Permit" means a written authorization issued to a Cable Operator by the City, other than a Franchise.
- (v) "Public Way" means any public street, public place, public Easement or right-of-way dedicated to the public use.
- (w) "Reporting Quarter" shall mean a Cable Operator's fiscal quarter as reported to the City. If a Cable Operator does not report to or notify the City concerning the dates of its fiscal quarters, then the "Reporting Quarters" for a Cable Operator shall be considered to be the periods ending on the last day of March, June, September and December of each calendar year.
- (x) "School" shall mean any K-12 school operated within the City by any public school system.
- (y) "Service Tier" means a category of Cable Service or Other Services provided by a Cable Operator, and for which a separate rate is charged.
- (z) "State" means the State of Nebraska.

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(aa) "Subscriber" means a person lawfully receiving Cable Service delivered by a Cable Operator.

(bb) "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(cc) "Video Programming Provider" means a provider of Video Programming which is authorized by the City or applicable law to utilize the Public Way to provide video programming to residents of the City.

It is intended that the definitions of any of the terms which are also defined in the Cable Act be consistent with the corresponding Cable Act definitions. In the event that it is determined that any of the above definitions are inconsistent with the Cable Act, then the definitions contained in the Cable Act shall control.

**18-503. Administration; delegation of powers and authority.**

Unless prohibited by Federal or State law, the Council may delegate its powers and authorities with respect to a Cable Operator to one or more duly authorized representatives of the City, including the Mayor, the City Manager, a Cable Advisory Committee or an outside consultant; provided, however, the Council may never delegate its power to franchise or to revoke a Franchise to another person.

**18-504. Cable Operator; applicability.**

Unless exempted entirely or in part from this Article or any of its provisions, or granted relief by the Council from any of its provisions, then this Article shall be applicable to all Cable Operators.

**18-505. Video Programming; exemptions.**

A provider of Video Programming shall not be considered as a Cable Operator and subject to this Article if the provider does not use or cross any Public Way. An exempted person or Entity remains exempted only as long as it meets the above criteria. An exempted person or Entity is, however, expected to abide by, and comply with, any other applicable City, County, State and Federal laws and regulations, including any applicable Federal or State consumer protection or consumer service laws and regulations.

**18-506. Same; request for relief by Cable Operator.**

Any Cable Operator may file a written petition, at any time, with the City requesting relief from one or more provisions of this Article. The relief requested may specifically include the delay in implementation (as to the petitioning Cable Operator only) of one or more provisions of this Article. In order to receive any relief from one or more of the provisions of this Article, a Cable

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Operator must satisfactorily demonstrate to the Council that at least one of the following facts exist:

- (a) the provision and/or requirement is expressly prohibited by Federal law, the FCC or State law; or
- (b) that the provision in question materially affects, and is in conflict with an expressed right that is specifically noted in an existing Franchise agreement (but only for the term of the existing Franchise); or
- (c) that the imposition of the provisions and/or requirements will create an undue economic hardship on the Cable Operator so as to imperil or eliminate the Cable Operator's ability to provide Cable Service to a majority of current Subscribers.
- (d) As an alternative to requesting relief, a Cable Operator may petition for clarification as to the precise intent and effect that one or more provisions or sections of this Article has on the petitioning Cable Operator.

If the Council grants relief to a Cable Operator, then the Franchise agreement shall be amended to reflect the extent of the relief.

**18-507. Inconsistencies with Federal or State Law.**

If any provision or section of this Article is inconsistent with any provision or section of a Federal or State rule, regulation, or law, then the Federal or State rule, regulation, or law shall control.

**18-508. Notices.**

Each Franchise shall designate the City's and the Cable Operator's contact person to receive notices, filings, reports, records, documents and other correspondence. All notices shall be delivered to each party's contact person either by personal service with signed receipt of delivery, certified or registered mail, return receipt requested, or by recognized overnight delivery service with receipt verification. All other filings, reports, records, documents, and other correspondence may be delivered by any permissible means including, but not limited to: personal service, overnight mail, email or facsimile. Delivery shall be deemed to have occurred at the time of receipt.

**18-509. Indemnity.**

Each Cable Operator shall defend, indemnify, and hold harmless the City, its officials, authorized agents and employees from any and all penalty, damage, or loss arising out of claims, suits, demands, causes of action, or award of damages which might be claimed now or in the future, which arise out of, or are caused by, the construction, erection, location, products performance, operation, maintenance, repair, installation, replacement, removal or restoration of

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the Cable System within the City by a negligent act or omission of the Cable Operator, its authorized agents or employees, contractors, or authorized representatives; provided, however, the Cable Operator shall not be obligated to indemnify the City for any penalty, damage or loss resulting from the willful misconduct or negligence of the City or from any use of the Cable System by the City (to include the use of PEG channels). Reasonable attorney's fees, consultant's fees, expert witness fees and other expenses of litigation are included as those costs which may be recovered by the City. With respect to any request for indemnification made to a Cable Operator by the City:

(a) The City shall give the Cable Operator written notice of its obligation to indemnify the City at least 10 calendar days prior to the deadline for responding to the claim or action, and if no such deadline exists, within 30 days of receipt of written notification of a claim or action.

(b) The Cable Operator shall then have the right to defend, settle or compromise any such claims at the Cable Operator's expense and with the assistance of counsel of the Cable Operator's choice. The City shall provide reasonable cooperation in connection with the defense subject to the Cable Operator's obligation to reimburse the City for actual out-of-pocket expenses incurred by the City as the result of a request by the Cable Operator.

(c) If the Cable Operator fails to defend a claim within a reasonable time, the City shall be entitled to assume the defense and the Cable Operator shall be bound by the results and shall be liable to the City for the damages incurred by the City to include the costs referred to above as recoverable by the City.

(d) If a Cable Operator obtains counsel for the City, and/or its officials, agents and employees, then any one of them shall have the right to approve counsel, which approval shall not be unreasonably withheld. The City, its officials, agents and employees shall have the right to retain counsel of their own at their own expense.

#### **18-510. Insurance.**

A Cable Operator shall secure and maintain, for as long as it provides Cable Service, insurance coverage (the "Insurance") in at least the following limits:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$2,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage all owned and non-owned hired ;	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

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- (a) The Insurance shall specifically include the City as an additional insureds with respect to any liability arising out of the Cable Operator's performance.
- (b) The Insurance shall be issued by one or more companies licensed to do business in the State.
- (c) The Insurance shall contain an endorsement obligating the insurance company to furnish the City with reasonable written advance notice of the cancellation of the insurance.
- (d) Before a Cable Operator provides Cable Service, the Cable Operator shall deliver the policies or certificates representing the Insurance to the City. Renewal or replacement policies or certificates shall be delivered to the City prior to the expiration of the then existing Insurance.

**18-511. Performance Bond.**

A Cable Operator shall comply with the following bonding requirements:

- (a) A construction/completion bond shall be furnished prior to the time that a Cable Operator commences a construction, upgrade, rebuild, or repair/maintenance project that has a capital construction cost or outlay exceeding \$50,000 in value where the construction takes place in one or more Easements or in the Public Way; provided, however, the following shall not be considered in determining whether a project exceeds \$50,000: (i) the cost attributable to any portion of the construction that utilizes aerial facilities consisting of existing poles owned by the Cable Operator or other utilities, or (ii) construction within a new subdivision where the construction of facilities is coordinated with the developer of the subdivision. The amount of the bond shall equal at least 90% of the projected capital construction cost or outlay, but shall not exceed \$250,000. The construction/completion bond shall remain in force at all times until one year after completion of construction as determined by the City, unless relief is granted or a reduction schedule is detailed in an agreement between the City and the Cable Operator.
- (b) Any construction/completion bond shall specifically guarantee that a Cable Operator will timely abide by its construction, upgrade, rebuild, or repair/maintenance schedule for the Cable System and/or any time table for technical and service improvements or additions to the Cable System as may be committed to, or agreed upon, from time to time by the City and the Cable Operator.
- (c) If the City draws on a bond as a result of a Cable Operator's failure to timely discharge its obligations, or failure to construct and activate the Cable System, or failure to complete a Cable System upgrade or rebuild or repair/ maintenance project, then the Cable Operator shall replenish the bond within 30 days to the level required in this section.

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(d) The Council may authorize a Cable Operator to substitute a Cash Deposit, Letter of Credit, or a Guaranty of another person or Entity for any of the bonds provided for in this section; provided, however, the person or Entity providing a Letter of Credit or Guaranty, and the form of the Letter of Credit or Guaranty, shall be subject to the approval of the City Council in its sole discretion.

**18-512. Furnishing of Reports.**

(a) A Cable Operator's schedule of charges for regular Subscriber service, its policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Cable Operator's policy in connection with its Subscribers shall be filed with the City upon request.

(b) Upon written request of the City, a Cable Operator shall furnish, at no cost to the City, copies of any or all non-confidential filings with the FCC and the United States Copyright Office within 30 days of the request.

**18-513. Records.**

A Cable Operator shall keep complete and accurate records concerning the business and operations of the Cable System. In addition:

(a) The City by its authorized representatives shall have the right, on reasonable advance written notice, to review all records pertaining to a Cable Operator's cable operations with respect to the City as are reasonably necessary to determine a Cable Operator's compliance with the Franchise. Such notice shall specifically reference the section(s) of the Franchise or the Cable Ordinance for which the review is requested. The Cable Operator agrees that it will furnish the information requested electronically to the City within 30 days of the request.

(b) Non-revenue financial records will only be requested in the aggregate on a summary prepared by the Cable Operator.

(c) The City acknowledges the sensitivity of a Cable Operator's records, and will request this information only on as needed basis, and will treat this information as confidential and proprietary to the fullest extent allowed by law. The Cable Operator shall not be required to produce any records in violation of the Cable Act or any other applicable law. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, it shall deny access to any of a Cable Operator's records marked confidential to any Person.

(d) The City shall have the right to hire, at its own expense, an independent certified public accountant, or other business or financial expert, to review the records of a Cable Operator pertaining to revenue information.

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(e) If after a review or audit of a Cable Operator's records, it is discovered that the Cable Operator has underpaid the City by an amount that exceeds the greater of (i) \$2500, or (ii) 3% of the total amount paid for any Reporting Quarter, then the City may require the Cable Operator to reimburse the City for the actual cost of the audit, in addition to the amount of underpayment; provided, however, no such reimbursement shall be required if the reason for the underpayment is due to the annexation of additional areas into the City, for which notification of the annexation was not provided to a Cable Operator.

(f) A cable Operator shall not be required to maintain any records for Franchise compliance purposes longer than 4 years, except for written service complaints, which shall be kept for 1 year.

(g) A Cable Operator shall maintain a full and complete set of plans, records and strand maps showing the location of the Cable System.

#### **18-514. Customer Service.**

A Cable Operator shall comply with the following customer service requirements:

(a) A Cable Operator shall comply with the customer service standards as provided for in the FCC Regulations, as may be amended from time to time. This Section shall be considered as notice to Cable Operators of the City's election to enforce those standards.

(b) A Cable Operator shall (i) maintain a customer service facility within the boundaries of the City staffed by customer service representatives that have the capacity to accept payment, adjust bills, respond to repair, installation, reconnection, disconnection, or other service calls; distribute or receive converter boxes, remote control units, or other equipment related to the provision of cable or video service; or (ii) provide customers with bill payment facilities through retail, financial, or other commercial institutions located within the boundaries of the City; or (iii) provide an address, toll-free telephone number or electronic address to accept bill payments and correspondence, and provide secure collection boxes for the receipt of bill payments and the return of equipment, provided that if a Cable Operator provides secure collection boxes, it shall provide a printed receipt when items are deposited; or (iv) provide an address, toll-free telephone number or electronic address to accept bill payments and correspondence, and provide a method for customers to return equipment to the Cable Operator at no cost to the customer.

(c) A Cable Operator shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.

(d) A Cable Operator shall comply with all Federal and State laws and regulations concerning special service requirements for disabled, sight or hearing impaired or ambulatory impaired Subscribers.

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(e) A Cable Operator shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Cable Operator's name, address and local or toll-free telephone number. To the extent required by applicable law, a Cable Operator shall give the City 30 days' prior notice of any rate increases, channel lineup or other substantive service changes.

(f) A Cable Operator shall abide by any, and all, Subscriber privacy rules or regulations under Federal or State law.

#### **18-515. Preferential or Discriminatory Practices Prohibited.**

A Cable Operator shall not deny Cable Service, deny access, or otherwise discriminate, nor subject any person to prejudice or disadvantage on the basis of age, race, creed, color, sex, national origin, handicap, religious affiliation or location of residence. Cable Operators shall not deny Cable Service, or the extension of Cable Service, to any group of potential residential cable Subscribers because of the income of the residents of the local area in which such group resides. The provisions of this section shall not, however, prohibit a Cable Operator from:

(a) offering bulk rate discounts or promotions.

(b) denying service based on location of residence, if that residence is outside the parameters for line extension as provided for in this Article or the Cable Operator's Franchise.

#### **18-516. Construction and Use of Public Ways.**

All facilities of a Cable Operator shall be located, installed and maintained so as not to endanger or unnecessarily interfere with usual and customary use, traffic and travel upon Public Ways and Easements, and according to any Public Way or Easement use standards established by the City. In addition:

(a) A Cable Operator shall construct, operate, maintain and repair its Cable System in compliance with all current technical codes adopted by the City, the State and the FCC, as are customary to the cable television industry. To the extent that these are inconsistent with other provisions of a Franchise, or State or local law, then the more stringent shall govern in order to protect the public health, safety and welfare.

(b) A Cable Operator shall obtain all required Permits from the City before commencing any work requiring a Permit, including the opening or disturbance of any Public Way.

(c) All facilities of a Cable Operator shall be installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Cable Operator shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause

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damage, injuries, or nuisances to the public, to include barricades, flags, lights or other devices as are reasonably required for public safety.

(d) A Cable Operator shall use existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on Public Ways without obtaining all Permits required by the City. Any poles or other fixtures placed in any public way by the Cable Operator shall be placed in such a manner as not to interfere with the usual travel on such public way.

(e) The Cable Operator shall, at its own expense, restore any damage or disturbance caused to the Public Way as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Public Way immediately prior to such damage or disturbance.

(f) If a Cable Operator's system creates a hazardous or unsafe condition or an unreasonable interference with property, then the Cable Operator shall at its own expense voluntarily, or upon request of the City, remove or move, as appropriate, that part of the system that creates the hazardous condition.

(g) A Cable Operator shall not place equipment where it will interfere with the rights of property owners or with other public utility services or any other service facility that benefits the City or its residents' health, safety or welfare.

(h) A Cable Operator shall, at its expense, protect Public Ways and Easements, and support or temporarily disconnect or relocate in the same Public Way, any property of the Cable Operator when necessitated by reason of: traffic conditions, public safety, a street closing, street construction or resurfacing, change or establishment of a street grade, installations of other City utility services, or any improvement, construction or repair related to health, safety or welfare. Except in case of Emergency, the City shall provide at least 10 days written notice to the Cable Operator of the need for a relocation or temporary disconnection. In addition, the City shall have the right to remove any of the Cable Operator's facilities in the event of Emergency, and no charge shall be made by the Cable Operator to the City for restoration and repair, unless such acts amount to gross negligence by the City.

(i) If the City elects to alter or change the grade of any Public Ways, the Cable Operator upon reasonable notice from the City, shall relocate any portions of its Cable System impacted by the City's Public Way alterations, at the Cable Operator's expense.

(j) A Cable Operator shall, at the request of any person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Cable Operator, provided that the expense of doing so is paid by the person making the request and the Cable Operator is given reasonable advance written notice to prepare for such changes. The Cable Operator may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than 10 business days in the event of a temporary relocation and no less than 120 days for a permanent relocation.

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(k) A Cable Operator shall have the authority to trim trees in the Public Way at its own expense as may be necessary to protect its wires and facilities.

(l) In those areas of the City where transmission or distribution of both telephone and power companies are underground or are later placed underground, a Cable Operator's feeder and Subscriber drops shall also be placed underground. To the extent reasonably possible, a Cable Operator shall coordinate the joint use of facilities with the telephone and power companies. Subscriber drops shall be buried within a reasonable time period, subject to weather conditions.

**18-517. Technical Standards.**

A Cable Operator shall comply with any rules and regulations of the FCC concerning technical operation, signal quality, consumer electronics equipment compatibility and performance monitoring.

**18-518. Emergency Alert System.**

A Cable Operator shall comply with all applicable federal statutes, rules and regulations with respect to Emergency Alert Systems.

**18-519. Service Area and Expansion.**

Cable Service shall be provided as follows:

(a) A Cable Operator shall make Cable Service distributed over its Cable System available, at a charge which does not exceed the Cable Operator's normal rate for standard installations, to every residence within the any area within the City where there is a minimum density of at least 30 residences per lineal strand mile of cable as measured from the Cable Operator's closest trunk line or distribution cable that is actively delivering Cable Service as of the date of such request for service; provided, however, (i) such installation shall be financially and technically feasible, (ii) the Cable Operator shall have legal access to the Subscriber's location, and (iii) the Subscriber shall be within 125' of the Cable Operator's existing distribution system.

(b) Notwithstanding the above, a Cable Operator shall have the right, but not the obligation, to extend the Cable System into any other area of the City and to make Cable Service available to residential subscribers or to businesses, upon such terms and conditions as determined by the Cable Operator.

**18-520. Franchise.**

No person or Entity, other than the City, shall be permitted to construct, operate or maintain a Cable System where any part of the Cable System's facilities to occupy or cross Public Ways without first having entered into a Franchise. With respect to all Franchises:

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(a) The City may award one or more non-exclusive Franchises; provided, however, anytime (i) a Franchise is issued or (ii) the City otherwise grants a permit to a Video Programming Provider, which contains terms that are more favorable to a particular Cable Operator or Video Programming Provider, then the City shall, within 30 days of a written request from another Cable Operator or Video Programming Provider, modify that Cable Operator's Franchise or Video Programming Provider authorization to insure that the obligations applicable to any one Cable Operator or Video Programming Provider are no more burdensome than those imposed on one or more competing Cable Operators or Video Programming Providers. If the City fails to make modifications consistent with this requirement, the requesting Cable Operator's Franchise or Video Programming Provider's authorization shall be deemed so modified 30 days after the initial written request.

(b) An Applicant shall be selected as part of a public proceeding and hearing which affords due process to both the City and the Cable Operator. If the Applicant is selected as a Cable Operator, then the Applicant will enter into a Franchise agreement with the City.

(c) Unless prohibited by law, the City reserves the right to construct, operate or maintain its own Cable System within the City limits.

(d) If the Council awards a Franchise to an Applicant, or approves a proposal for renewal of a Franchise, then a Franchise agreement shall be signed. A newly franchised Cable Operator may not lay any cable until the Franchise agreement is executed by the Cable Operator and the City. At a minimum, a Franchise agreement shall contain provisions for the following:

- (1) the term or duration of the Franchise;
- (2) an agreement to comply with this Article;
- (3) any applicable construction, upgrade or rebuild schedule; and
- (4) any applicable build-out and density standard.

(e) Upon entering into a Franchise, a Cable Operator may construct, install, maintain, operate, repair, replace, remove, or restore a Cable System within the City. In so doing:

- (1) The Cable Operator may utilize the Public Ways and those Easements dedicated to the public use.
- (2) The Cable Operator shall be responsible for obtaining its own Easements for private property and pole attachment agreements with other utilities.

(f) The term of a Franchise may be for a period not to exceed 10 years from the date that a Franchise, or a Franchise renewal, is approved by the Council. Proceedings for the renewal of a Franchise shall be governed by the applicable provisions of the Cable Act.

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**18-521. Franchise Fees.**

Each Cable Operator shall pay to the City a Franchise Fee equal to 5% of the Gross Revenues of the Cable Operator. The City reserves the right at any time, upon 90 days' notice to all Cable Operators, to amend this section so as to increase the Franchise Fee to the maximum rate allowable under Federal law, in the event that the maximum rate is increased. It is intended that the Franchise Fees will promote the health, safety and welfare of the citizens of the City. Accordingly, the Franchise Fee shall be deposited into the general revenues of the City, unless otherwise specified.

- (a) The Franchise Fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise, consistent with Federal law.
- (b) Within 45 days after the end of each Reporting Quarter, a Cable Operator shall file with the City a detailed financial and revenue report showing the Gross Revenues received by the Cable Operator for operations within the City during the proceeding Reporting Quarter. The report shall include Gross Revenue from all sources upon which a Franchise Fee is payable. Gross Revenue may be reported in the aggregate by general service type or source.
- (c) In the event that payment is not made within 60 days after the end of a Reporting Quarter, then the Cable Operator may be declared in default of the Franchise, and the City may take action against the Cable Operator as authorized in this Article.
- (d) The acceptance of any payment shall not be construed as a release of, or an accord or satisfaction of, any claim that the City might have for further or additional sums payable under the terms of this Article, or for any other performance or obligation of a Cable Operator.
- (e) Payments of compensation made by a Cable Operator to the City pursuant to this Article shall be considered in addition to any and all taxes of general applicability owed to the City by the Cable Operator that are not included as Franchise Fee under Federal law.
- (f) A Franchise Fee shall not be payable on any Gross Revenue source(s) which are excluded by Federal law.

**18-522. Assignment of Franchise.**

A Cable Operator's Franchise may not be assigned in whole or in part without the City's prior written approval. For purposes of this paragraph, "Assigned" or "Assignment" shall mean the transfer, sale, or any other form of assignment of a Cable System, to include any transaction or action which effectively or actually changes ownership from one person or Entity to another to include the transfer of 50% or more of the ownership interest of an Entity or the parent of an Entity. Any attempted Assignment without prior written approval shall constitute a default in the Franchise. A proposed Assignment shall be subject to the following:

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- (a) At least 120 days before a proposed Assignment is scheduled to become effective, the Cable Operator shall make a written request to the Council for the City's approval of the proposed Assignment.
- (b) The City will not unreasonably withhold its consent to an Assignment. However, in making its determination, the Council shall consider the legal, financial and technical qualifications of the proposed assignee.
- (c) Nothing in this section shall restrict the City from considering criteria established under State or Federal law, rule or regulation.
- (d) Before an Assignment is approved by the City, the proposed assignee shall sign a statement indicating that it has read, understands, and intends to abide by any existing Franchise agreement.
- (e) The City may include certain amendment(s) to the Franchise or this Article as a condition to the Assignment; provided, however, any such amendment(s) shall either (i) be by mutual agreement between the City and the proposed assignee, or (ii) shall not have a material adverse effect on the rights and obligations of the Cable Operator under the Franchise.
- (f) In the event of any approved Assignment, the assignee shall assume all obligations and liabilities of the former Cable Operator.
- (g) The City's consent to an Assignment shall not relieve the former Cable Operator of its liability under the Franchise agreement until the Assignment actually takes place unless specifically relieved by Federal or State law or by the Council at the time an Assignment is approved. In the event of an Assignment, the former Cable Operator shall remain liable for any Franchise Fees incurred as of the time that the Assignment is effective for the period governed by the applicable statute of limitations.
- (h) If the Cable Operator has provided the City with all information as required by this section or the FCC in a timely manner, and the City has not taken action on the Cable Operator's request for transfer within 120 days after receiving such request, consent by the City shall be deemed given.

Consent shall not be required for an Assignment to a wholly-owned subsidiary Entity of a Cable Operator or the current parent Entity of a Cable Operator, whether the ownership is direct or indirect, such as through other wholly-owned intermediate subsidiaries. In addition, consent shall not be required for the granting of a security interest in the Cable Operator's system including its Franchise. However, if the holder of the security interest repossesses, forecloses or takes other action concerning its collateral, it shall dispose of the Cable System within a reasonable period of time and the disposition by the holder of the security interest shall be considered an Assignment subject to the provisions of this section.

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**18-523. Educational and Governmental Access.**

To the extent permitted by law, and in order to fulfill a public, educational and governmental access policy that will facilitate the long range needs of the City, each Cable Operator shall provide at its own expense one PEG Channel under the control of the City. The following shall apply to the PEG Channel:

(a) The City is solely responsible for the content it provides over the PEG Channel. The Grantee shall not exercise any editorial control over any programming of the PEG Channel, and shall also not be subject to any civil or criminal liability for any programs carried on the PEG Channel.

(b) The PEG Channel may be placed on any tier of service available to all Subscribers, including the digital tier. The City shall provide programming on the PEG Channel to occupy 70% of the hours between 11 a.m. and 11 p.m. for any twelve consecutive week period. In the event that the above the programming levels are not maintained or if the City does not adequately use the channel, the Cable Operator reserves the right to have the channel returned to the Cable Operator for the Cable Operator's use. If at any later time, which must be at least one year from the return of the PEG Channel to the Cable Operator, the City desires to utilize the PEG Channel, it may notify the Cable Operator of its desire to do so, and the PEG Channel shall be made available to the City within 30 days of the request. The above programming requirements shall apply with respect to continuance of the PEG Channel by the City.

(c) If the City is utilizing the PEG Channel and is also using any of the following locations for signal input, signal input locations shall be provided at City Hall, the Alliance Police Department and the Alliance School District Headquarters (currently used for City Council meetings). Only those signal input locations actually being used shall be required.

(d) Cable Operators may interconnect their cable systems for the purpose of sharing PEG access programming, provided that the Cable Operators are able to reach agreement for the interconnection. Nothing in this paragraph should be construed as requiring a Cable Operator to add additional PEG Channels.

**18-524. Public Service.**

A Cable Operator shall furnish, upon request, one outlet for public buildings as identified in a Cable Operator's Franchise. With respect to this service:

(a) The Cable Service provided pursuant to this section shall not be used for commercial purposes and shall not generally be available for public viewing. The City shall take reasonable precautions to prevent any use of the Cable System that results in the inappropriate use or any loss or damage to the Cable System.

(b) The City shall hold the Cable Operator harmless from any and all liability or claims arising out of the provision and use of Cable Service to City buildings.

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**18-525. Default.**

When a Cable Operator violates a provision of this Article, or acts so as to compromise the legal, financial or technical integrity and/or stability of the Cable System or the Cable Operator itself, in either case, to a degree that the interests of the Subscribers are negatively affected, then a Cable Operator shall be considered in default of this Article.

(a) Examples of a default shall include, but are not limited to: bankruptcy (except for a reorganization as long as the Cable Operator is in compliance with an approved plan or other court order), insolvency, failure to pay taxes or Franchise Fees, failure to receive written City approval for an Assignment, or failure to substantially abide by the terms and conditions of the Franchise agreement or this Article, to include the failure to operate its Cable System.

Provided:

(1) It is not the City's intention to subject a Cable Operator to penalties, fines, forfeitures or revocation of a Franchise for violations where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the City, or where strict performance would result in practical difficulties and hardship to a Cable Operator which outweighs the benefit to be derived by the City and/or Subscribers.

(2) Events in the nature of force majeure or conditions which cannot be corrected because they are matters reasonably beyond the ability of the affected Cable Operator to anticipate and control shall not be considered a default. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which a Cable Operator's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary; provided, however, such noncompliance shall only be excused for as long as the Cable Operator is reasonably pursuing compliance.

(b) In the event that a default occurs, the City shall provide written notice of the default to the affected Cable Operator. The notice of default shall specify the violation(s).

(c) The Cable Operator shall have 30 days from the receipt of the written notice to bring itself into compliance so that it is no longer in default of its Franchise or this Article, as the case may be; provided, however, if by the nature of default, the default cannot be cured within this 30 day period, the Cable Operator shall initiate reasonable steps to remedy the default and notify the City of the steps being taken and the projected date that they will be completed.

(d) If the Cable Operator fails to cure its default within the time period provided for above, the matter shall be set for public hearing before the Council to be held within 75 days after the notice of default was mailed to the Cable Operator. Written notice of the time and place of the public hearing shall be sent to the Cable Operator at least 20 days prior to the date of the hearing.

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(e) At the hearing, the Cable Operator shall have an opportunity to state its position on the matter, present evidence and question witnesses. If the Cable Operator fails to attend the hearing where a continuance of the hearing has not been granted by the Council, then the Cable Operator may be declared in default of the Franchise agreement.

(f) If the default has not been resolved by the time of or as a result of the hearing, the Council may, after the public hearing, direct the Cable Operator to take corrective action within a specified period of time, or may declare the Cable Operator in default of the Franchise agreement, and revoke or terminate the Franchise. The Council's action shall be delivered to the Cable Operator in writing within 15 days of the Council's action.

(g) If the Council directs corrective action to be taken and the Cable Operator does not rectify the default within the time specified, then the Council may without further notice declare the Cable Operator to be in default and revoke or terminate the Franchise.

(h) If the Cable Operator fails to comply with any determination by the Council, which determination is not stayed or overturned by order of an appropriate court, then the City shall have any and all remedies available to it by law.

**18-526. Removal of Cable System.**

(a) In the event of termination or forfeiture of the a Franchise Agreement or abandonment of a Cable Operator's Cable System, the City may require the Cable Operator to remove all or any portion of its Cable System from all Public Ways; provided, however, that the Cable Operator will not be required to remove those portions of its Cable System required to provide telecommunications services or other non-cable service to the extent that the Cable Operator lawfully provides telecommunications services or other non-cable service over the Cable System.

(b) If a Cable Operator has failed to commence removal of its Cable System, or such part as designated by the City, within 120 days after written demand for removal is given, or if the Cable Operator has failed to complete such removal within twelve months after written demand for removal is given, the City may apply funds secured by the Franchise Agreement toward removal.

**18-527. Federal Legislation, Rules and Regulations; Franchise Subject to Amendment.**

In addition to any requirements contained within this Article, all Cable Operators shall be expected to comply with all applicable provisions of the Cable Act and all other laws directed at controlling or regulating Cable Operators, and any rules and regulations issued pursuant to those laws. In addition, any Franchise issued pursuant to this Article shall be subject to amendment to incorporate any applicable Federal legislation, rules or regulations which become effective after the date of the Franchise.

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**18-528. Tampering and unauthorized reception of certain signals.**

No person shall intercept or receive, or assist in intercepting or receiving, any communications service offered over a Cable System, unless specifically authorized to do so by a Cable Operator, or as may otherwise be specifically authorized by law.

(a) For purposes of this section, the term “assist in intercepting or receiving” shall include the manufacture or distribution of equipment intended by the manufacturer or distributor for the unauthorized reception of Cable Service.

(b) Without securing permission from a Cable Operator, or making payment to a Cable Operator, then no person shall be authorized to make any connection with any part of a Cable System for the purpose of receiving or intercepting, or assisting others to receive or intercept any Cable Service provided lawfully by a Cable Operator.

(c) No person shall be authorized to willfully tamper with, remove or damage any facilities used for the distribution of Cable Service.

(d) Any violation of this section shall constitute a misdemeanor and upon conviction shall be subject to a fine of up to \$100. Each day that the violation continues shall be considered a separate offense.

**18-529. Severability.**

The provisions of this Article will be deemed severable, and if any provision of this Article is held illegal, void, or invalid under applicable law, that provision may be changed to the extent reasonably necessary to make the provision legal, valid and binding. If any provision of this Article is held illegal, void or invalid in its entirety, the remaining provisions of this Article will not be affected.

SECTION 2. All ordinances or parts of ordinances passed and approved prior to passage, approval and publication of this ordinance in conflict herewith are now repealed.

SECTION 3. This Ordinance shall be published in pamphlet form, and shall be effective upon its passage and approval.

City Attorney Ediger explained to Council that our franchise with Charter Communications was given an extension which has expired. Charter Communications has designed a Nebraska representative which we have been working with to renew the franchise. Since the federal deregulations of cable systems there are now more options for consumers and competition is the new regulator. The City’s role is to protect our right-of-ways and to insure compliance to the Electric Codes. Mr. Ediger reported that in negotiating with Charter that they have requested to remove the requirement for maintaining a local office. They have indicated they are not intending to close their local office at the present time, but technology is changing quickly and the need for a local office may not be necessary in the future. Charter also has

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requested to not maintain a peg (public, educational and governmental) channel and has suggested the City use their web page to view Council meetings.

Mr. Jerimiah Blakey, 5400 So. 15<sup>th</sup> Street, Lincoln, NE representing Charter Communications addressed Council. Mr. Blakey stated he has been in his position for approximately 18 months. Charter provides services to 41 States which equates to approximately 26 million customers, of which Nebraska has 89 communities and 200,000 customers. Recently their internet service has been enlarged to a gigabit and they also provide a low cost connection service for families in need at the rate of \$15.00 per month for a 15 mg connection. The City of Alliance receives a 5% franchise fee for all services utilized within the community.

Roll call vote with the following results:

Voting Aye: Bentley, Dafney, Mischnick, Reynolds.

Voting Nay: None.

Motion carried.

- The next item on the agenda was Resolution No. 18-146 which will authorize the purchase of a new Refuse Truck. The purchase will be from Kois Brothers Equipment Company, Inc. in the amount of \$206,213.27. The following information was provided for Council:

[As part of this year's Capital Improvement Program "CIP" budget process the need for a new trash truck for the Refuse Department was identified. Funding for this purchase was added to the budget and approved. KOIS Brothers Equipment Company has a current contract with HGAC (Bid No. RH08-18) for the appropriate equipment. Once ordered the equipment would take approximately 90 days to construct and deliver. The purchase price for this vehicle is \$210,719.27 which will be drawn from Account No. 06-41-42-59-960.

Currently the City has three trash trucks, one of which is used as a backup when a breakdown occurs or servicing is required. In order to provide the required coverage to our customers, two trucks are operational full-time throughout the week. This does not take into account for poor weather conditions, special service needs, scheduling conflicts, etc. It would be our desire with the purchase of the new truck to be able to add an additional 20 hours of service during the week to overcome these issues and provided the expected service to our customers. As a result, we do not anticipate a trade-in of our oldest vehicle at this time.]

A motion was made by Councilman Bentley and seconded by Councilman Mischnick to approve Resolution No. 18-146 which follows in its entirety:

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RESOLUTION NO. 18-146

*WHEREAS*, The City of Alliance Refuse Department had on their capital improvements for this fiscal year, the purchase of a refuse collection truck; and

*WHEREAS*, Pricing for this equipment was obtained from the government bid under the Cooperative Agreement with the Houston-Galveston Area Council "H-GAC"; and

*WHEREAS*, The proposed refuse truck will be mounted on a 2020 Freightliner chassis. The 23 cubic yard EMCO refuse body with driver-side EMCO lift arm and triple camera system will be provided by Kois Brothers Equipment Company, Inc. of Commerce City, CO for the total price of Two Hundred Six Thousand Two Hundred Thirteen and 27/100ths Dollars (\$206,213.27); and

*WHEREAS*, Adequate funds were budgeted for this purchase within Account No. 06-41-42-59-960; and

*WHEREAS*, Council believes that it is in the best interest of the City to approve this purchase as proposed.

*NOW, THEREFORE, BE IT RESOLVED*, by the Mayor and City Council of Alliance, Nebraska, that the Mayor be and hereby is authorized to enter into a contract for the purchase of a 2020 Freightliner Chassis with 23 cubic yard EMCO refuse body with driver-side EMCO lift arm and triple camera system for the price of Two Hundred Six Thousand Two Hundred Thirteen and 27/100ths Dollars (\$206,213.27) from Kois Brothers Equipment Company, Inc. of Commerce City, CO.

*BE IT FURTHER RESOLVED*, that the purchase will be funded from Refuse Account No. 06-41-42-59-960.

Roll call vote with the following results:

Voting Aye: Dafney, Bentley, Reynolds, Mischnick.

Voting Nay: None.

Motion carried.

- Resolution No. 18-147 which will authorize the update to the SCADA System to include the Sewer Lift Stations was next before Council. The following information was provided for Council:

[Currently the City water wells and towers are on a SCADA (Supervisory Control and Data Acquisition) System. Staff has proposed including the sewer lift stations on the same program to increase the monitoring and supervision of the lift stations. Currently we are using an auto dialer system connected by phone lines. This proposed change was included in the Capital Improvement Plan and approved in this year's fiscal budget within the Sewer Fund, Account No. 07-52-58-59-950.

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Due to the specific nature of the service and existing software, the need to seek competitive bids is not required. Our current vendor, HOA Solutions, Lincoln, NE will supply all PLC and HMI programming, software and configurations required for all five sewer lift stations with the total cost of equipment and services totaling \$40,000. All shop drawings and as-builts for all the equipment supplied will be included.]

A motion was made by Councilman Bentley, seconded by Councilman Mischnick to approve Resolution No. 18-147 which follows in its entirety:

RESOLUTION NO. 18-147

*WHEREAS*, The City of Alliance Sewer Department had on their Capital Improvements Plan for the current fiscal year the inclusion of the Sewer Lift Stations on the Supervisory Control and Data Acquisition (SCADA) System; and

*WHEREAS*, The professional services contractor providing pricing for the upgrade to the SCADA system is HOA Solutions of Lincoln, Nebraska in the amount of \$40,000.00; and

*WHEREAS*, HOA Solutions will be providing all PLC and HMI programming, software and configuration required to add five sewer lift stations to the program along with shop drawings and as-builts; and

*WHEREAS*, The Alliance Sewer Department has budgeted \$40,000.00 for this project and Council believes that it is in the best interest of the City to approve this purchase.

*NOW, THEREFORE, BE IT RESOLVED*, by the Mayor and City Council of Alliance, Nebraska, that the Mayor be and hereby is authorized to enter into a contract for the Supervisory Control and Data Acquisition (SCADA) System Upgrade to include sewer lift stations with HOA Solutions in the amount of \$40,000.00.

*BE IT FURTHER RESOLVED*, that the purchase will be funded from Sewer Account No. 07-52-58-59-950.

Roll call vote with the following results:

Voting Aye: Dafney, Bentley, Reynolds, Mischnick.

Voting Nay: None.

Motion carried.

- Council next discussed the potential for developing solar farms in Alliance and adding solar power to our electric profile. Resolution No. 18-148 which will allow Alliance to participate in a Statewide RFP for the construction of a solar farm was next on the agenda. The following information was provided:

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[At our November 6<sup>th</sup> Council meeting solar power was discussed. The City had received a proposal from Sol Systems and GenPro Energy to install a 1.14 MW-dc solar farm on City owned property. Since that time the City has also received interest from another company for a similar project. It has been pointed out that Alliance is an excellent location for a solar farm as it has an ideal climate for collecting solar power. We believe interest has recently peaked due to Federal tax incentives which expire at the end of 2019.

Rich Andrysik from Nebraska Municipal Power Pool, of which we are a member is preparing a Request for Proposals (RFP) for a solar project in Nebraska. Based on the Alliance's recent interest he has included us in the RFP with a handful of other Nebraska cities (Fairbury, Pender, Stuart, West Point and Wisner). The following are some highlights for Alliance:

- The City of Alliance has the opportunity to purchase 1.5 Megawatts (MW) of solar electricity (2% of Alliance's electrical use) from a solar farm that would be located on City property.
- The additional cost to the City is expected to be around \$33,000 annually (an additional 1.5 cents per kilowatt hour KWH for electricity generated by the solar system).
- The solar energy would be purchased via a power purchase agreement (PPA) between the City and a private generation company.
- The costs per MW generated from the solar system (somewhere around 50 to 60 cents) would be locked in for 20-30 years.
- The City will be responsible for interconnection costs to the solar generation facility. This will include extended line for tapping the facility on to the City's electric system and possible protection equipment. The City is seeking input from an electrical engineer to understand these potential costs.
- All other associated costs (i.e. design, development, installation, operation and maintenance) would be covered by the private company.
- The DC/AC conversion costs will be covered by the private company. The City is not expected to bear these costs.
- The expected time for completing this project is 14-16 months.
- The developer will be responsible for all decommissioning expenses of the solar generation facility.

The City presently pays \$40.28/MWh for the majority of MEAN energy (86.5% of portfolio); \$51/MWh for wind energy (5.8% of portfolio) and \$15.72/MWh for LAP hydropower (7.7% of portfolio). The solar proposal for Alliance acting alone would increase the current annual energy cost by 1.21%, but would lock the rate for that 2% of the portfolio for 30 years. Transmission charges would remain unaffected by the addition of solar to the portfolio mix.

Economies of scale may be achieved (and thus lower unit charges) by cooperating with other MEAN communities to increase the size of the project or through multiple projects bid concurrently. The other thought is Alliance may do better on

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our own as we are an excellent location for a solar farm and have an ideal climate for collecting solar power.]

A motion was made by Councilman Mischnick, seconded by Councilman Bentley to approve Resolution No. 18-148 which follows in its entirety:

RESOLUTION NO. 18-148

*WHEREAS*, The City of Alliance has an opportunity to participate in a Statewide Request for Proposals (RFP) for a solar project in Nebraska; and

*WHEREAS*, The Nebraska Municipal Power Pool, of which we are a member, is preparing a Request for Proposals for a solar project in Nebraska with a handful of other Nebraska cities; and

*WHEREAS*, Economies of scale may be achieved by cooperating with other Municipal Energy Agency of Nebraska communities to increase the size of the project or through multiple projects bid concurrently; and

*WHEREAS*, The City Council believes it is in the best interest of our citizens to participate in the Statewide Request for Proposals to determine the best option for the City regarding solar power.

*NOW, THEREFORE, BE IT RESOLVED* by the Mayor and Council of the City of Alliance, Nebraska, that the City of Alliance is authorized to participate in the Statewide Request for Proposals (RFP) for a solar project in Nebraska being prepared by the Nebraska Municipal Power Pool.

*BE IT FURTHER RESOLVED* that the City Council will be provided the results of the Request for Proposals and determine at that time whether to proceed with the proposed solar projects or to remove Alliance from consideration.

Roll call vote with the following results:

Voting Aye: Dafney, Bentley, Reynolds, Mischnick.

Voting Nay: None.

Motion carried.

- Next, Mayor Dafney asked Council's confirmation that his representation on the NLC committee is official City business and will qualify for travel reimbursements as outlined in the Council's Travel Policy. Mayor Dafney has been appointed to the National League of Cities (NLC) Transportation and Infrastructure Services federal advocacy committee. This committee has the lead responsibility for developing NLC's federal policy positions on issues involving transportation, including planning, funding, safety and security of public transit, streets and highways, aviation, railroads and ports. There is adequate funding in this year's fiscal budget to

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accommodate this request without impacting the current Council conference and training schedule.

A motion was made by Councilman Mischnick and seconded by Councilman Bentley to approve Mayor Dafney's request.

Roll call vote with the following results:

Voting Aye: Bentley, Reynolds, Mischnick.

Voting Nay: None.

Abstaining: Dafney.

Motion carried.

- Board reappointments were the next item for Council.

A motion was made by Councilman Bentley, seconded by Councilman Reynolds to reappoint Edison Red Nest III, Native American Representative to the Police/Citizen Board for a term ending December 31, 2021.

Roll call vote with the following results:

Voting Aye: Dafney, Bentley, Reynolds, Mischnick.

Voting Nay: None.

Motion carried.

A motion was made by Councilman Bentley, seconded by Councilman Reynolds to reappoint Marci Moran, Homemaker Representative to the Police/Citizen Board for a term ending December 31, 2021.

Roll call vote with the following results:

Voting Aye: Dafney, Bentley, Reynolds, Mischnick.

Voting Nay: None.

Motion carried.

A motion was made by Councilman Bentley, seconded by Councilman Reynolds to reappoint Jeralee Wangler, Social Services Representative to the Police/Citizen Board for a term ending December 31, 2021.

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Roll call vote with the following results:

Voting Aye: Dafney, Bentley, Reynolds, Mischnick.

Voting Nay: None.

Motion carried.

A motion was made by Councilman Bentley, seconded by Councilman Reynolds to reappoint Stephen Brittan to the Alliance Planning Commission for a term ending December 31, 2021.

Roll call vote with the following results:

Voting Aye: Dafney, Bentley, Reynolds, Mischnick.

Voting Nay: None.

Motion carried.

A motion was made by Councilman Bentley, seconded by Councilman Reynolds to reappoint Wayne Davis to the Alliance Planning Commission for a term ending December 31, 2021.

Roll call vote with the following results:

Voting Aye: Dafney, Bentley, Reynolds, Mischnick.

Voting Nay: None.

Motion carried.

A motion was made by Councilman Bentley, seconded by Councilman Reynolds to reappoint Walter Halle to the Alliance Planning Commission for a term ending December 31, 2021.

Roll call vote with the following results:

Voting Aye: Dafney, Bentley, Reynolds, Mischnick.

Voting Nay: None.

Motion carried.

- The last item on the agenda was an Executive Session to discuss the Vitalix Lease.

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Mayor Dafney motioned, pursuant to Section 84-1410 Reissue Revised Statutes of Nebraska 1943 that the Alliance City Council finds a closed session is necessary for the protection of the public interest to conduct a strategy session for litigation which may be imminent following communication of a demand by the City. The motion was seconded by Councilman Mischnick.

Roll call vote with the following results:

Voting Aye: Dafney, Bentley, Reynolds, Mischnick.

Voting Nay: None.

Motion carried.

Council entered into closed session at 7:47 p.m. The closed session concluded at 8:24 p.m.

- Mayor Dafney stated, "there being no further business to come before the Alliance City Council, the meeting is adjourned at 8:25 p.m."

(SEAL)

  
Mike Dafney, Mayor

  
Linda S. Jines, City Clerk

