

January 22, 2019

## ALLIANCE CITY COUNCIL

REGULAR MEETING, TUESDAY, JANUARY 22, 2019

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

The Alliance City Council met in a Regular Meeting, January 22, 2019, at 7:00 p.m. in the Board of Education Meeting Room 1604 Sweetwater Avenue, Alliance, Nebraska. A notice of meeting was published in the Alliance Times Herald on January 16, 2019. 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 Dafney opened the January 22, 2019 regular meeting of the Alliance, Nebraska City Council at 7:02 p.m. Present were Mayor Dafney, Council Members Mischnick, Jones, Reynolds and Bentley. Also present were City Manager Kuckkahn, Finance Director Waggener, City Attorney Hoelsing and City Clerk Jines.

- Mayor Dafney read the Open Meetings Act Announcement.
- The first action for Council was to proclaim that the week of January 27, 2019 be Lutheran Schools Week. Councilman Bentley read the following Proclamation which was presented to the 8th grade students of the school which are the members of the first graduating class from the school:

### PROCLAMATION

*WHEREAS*, teaching the young in full-time Lutheran schools has been an integral part of the heritage and the life of the Lutheran Church-Missouri Synod from its 1847 beginning; and

*WHEREAS*, congregations of the Lutheran Church-Missouri Synod maintain the largest Protestant school system in the United States, enrolling over 200,000 students in over 2,000 preschools, elementary, secondary schools, and colleges, served by over 12,000 teachers and professors with a support system of over 6,000 congregations; and

*WHEREAS*, the purpose and mission of Lutheran schools is to equip children, young adults, and their parents to prepare for service and leadership in Lutheran congregations; and

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*WHEREAS*, graduates of Lutheran schools have gone on to distinguish themselves through service and leadership in community, government, and the church; and

*WHEREAS*, Immanuel Evangelical Lutheran School has been in existence since 2014 and is located at 1312 E. 10<sup>th</sup> Street with an enrollment of approximately 150 students; and

*WHEREAS*, during the week of January 27 – February 2, 2019, there will be several activities with student involvement in recognition of National Lutheran Schools Week.

NOW, THEREFORE, I, Mike Dafney, Mayor of the City of Alliance, Nebraska, do hereby proclaim the week of January 27-February 2, 2019 as

### NATIONAL LUTHERAN SCHOOLS WEEK

*IN WITNESS WHEREOF*, I have hereunto set my hand and caused the Great Seal of the City of Alliance to be affixed on this 22<sup>nd</sup> day of January in the year of the Lord Two Thousand Nineteen.

- Next on Council's agenda was the Consent Calendar. A motion made by Councilman Bentley and seconded by Councilman Mischnick to approve the Consent Calendar as follows:

#### CONSENT CALENDAR – JANUARY 22, 2019

1. Approval: Minutes of the Regular Meeting, January 8, 2019.
2. Approval: Payroll Costs for the period December 29, 2018 through January 11, 2019: \$526,239.49
3. Approval: Claims against the following funds for the period of January 3, 2019 through January 16, 2019: 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; \$1,410,758.81.
4. For Your Information: Attached is a listing of Demand Checks which were generated over the last financial quarter ending December 31, 2018. The report lists checks that have been issued which are not expenses within the budget. These are primarily made up of fund transfers, meter deposit refunds, utility overpayments and an occasional check which was required to be reissued.
5. Approval: The issuance of a Cemetery Certificate for the Northwest Quarter (NW¼) Lot Two (2), Section Three (3), Block Two (2), Original Plat to the Alliance Cemetery to Douglas L. Pratt and Glenda J. Pratt.
6. Approval: The issuance of a Tree Surgeon's License to Glenn Patrone dba Patrone's Landscaping & Tree Care.

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7. Approval: Resolution No. 19-03 continuing the Lease Agreement with the Aging Office of Western Nebraska for the use of the Senior Center to operate the Nutrition Program for persons 60 years of age and older. The lease will remain the same at \$500.00 per month and will be from July 1, 2019 through June 30, 2020.
8. For Your Information: Charter Communications is making the following channel lineup change:

Channel	Change	Channel Number	Effective
CLEO	Launch of CLEO (via One	200, 858	1/19/19

Charter also reported they reached an agreement with Tribune Broadcasting to provide WGN America and multiple local ABC, CBS, FOX and CW, and digital multi-cast channel affiliate stations.

The Spectrum TV Silver package will no longer include Cinemax. Cinemax will be available for subscription as an a la carte service only. The monthly a la carte subscription rate will be reduced from \$15.00 to \$9.99. The Spectrum TV Gold package will no longer include Cinemax and EPIX. These services will be available for subscription as a la carte services only. The monthly a la carte subscription rates for Cinemax and EPIX will each be reduced from \$15.00 to the following rates: Cinemax - \$9.99, EPIX - \$5.99. Pricing for monthly a la carte TMC subscription service will be reduced from \$15.00 to \$9.99.

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, Bentley, Mischnick, Reynolds, Jones.

Voting Nay: None.

Motion carried.

- The first reading of Ordinance No. 2879 updating the language to the Municipal Code at Chapter 18, Article X regarding unarmed sports was next for Council. Council was provided with the following information from City Attorney Hoelsing:

[Following a City Council meeting on December 18, 2018, the City Attorney's office was asked to opine on whether the current language of city code, §§ 18-413 through 18-418, follows state statutes and regulations regarding licensed and permitted unarmed combat sports. Mr. Scott Bolinger had requested changes to §§ 18-413 through 18-418 as follows:

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1. Amend § 18-413 to read “Unarmed Combat sport events/competitions, such as boxing and mixed martial arts, as defined by state law, which are regulated by the Nebraska State Athletic Commission, 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, unless the sports promoters and contestants are properly registered, licensed, and permitted by the state athletic commissioner, pursuant to R.R.S. 1943, §§ 81-8,128–81-8,142.01 and all applicable regulations as may exist from time to time.”

2. Amend the corresponding referenced definition of unarmed combat sports in § 13-415.

3. Amend § 18-416 to allow—rather than prohibit—alcohol sales at unarmed sports activities, with proper special designated alcohol licensure.

The relevant requested change to the § 18-413 is highlighted above. Currently, the City ordinance has the potential to regulate more than is regulated by the Nebraska State Athletic Commission (the “Commission”). The Commission only regulates professional and amateur boxing and mixed martial arts (“MMA”). See NEB. REV STAT. § 81-8,129; see also 38 NEB. ADMIN. CODE, Ch. 2, § 001.01. There are, however, other sports where (in the current ordinance language) competitors “seek to achieve dominance over the other by using physical techniques, including, but not limited to, grappling, kicking, and striking.” Examples would be wrestling, karate, kickboxing, judo, taekwondo, etc. Thus, the current ordinance has a potential to be misleading, as it broadly defines “unarmed combat sports” but then allows them to occur only if licensed and permitted by the Commission, which only has jurisdiction over two sports: boxing and MMA.

Therefore the first request by Mr. Bolinger would, if implemented, allow the City Ordinance to mirror the state statutes regarding boxing and MMA, and would restrict City regulation of unarmed combat sports to the regulation of boxing and MMA. It would provide more consistency to the City ordinance, as it appears that the intent of § 18-413 (due to its reference to the Commission) is towards the regulation of boxing and MMA to ensure conditional use permit applications require proper state licensure. Thus, the City Attorney’s office would recommend the following amendment, if one were to occur:

“Sec. 18-413. Restrictions.

Unarmed Combat sports and unarmed combat competitions, which mean those activities and events under the direction, management, control, and jurisdiction of the Nebraska State Athletic Commission, are prohibited in the law enforcement jurisdiction of the city, unless the sports or competitions’ promoters, managers, seconds, contestants, attending physicians, referees, matchmakers, judges, timekeepers, and other persons subject to licensure are properly registered,

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licensed, and permitted by the state athletic commissioner, pursuant to R.R.S. 1943, §§ 81-8,128–81-8,142.01 and all applicable regulations as my exist from time to time.”

The requested change to § 18-415 would naturally follow if § 18-413 were amended, reading as follows: “Unarmed combat sports or unarmed combat competitions . . .”

The third requested change is not addressed by the statutes or regulations of the Commission. Both the state statutes and regulations of the Commission are silent as to the prohibition or allowance of public consumption of alcohol at such events (naturally, the regulations prohibit the competitors and other licensees from consuming). The Commission has the exclusive jurisdiction and control of professional and amateur boxing and MMA, so one could argue that an ordinance restricting alcohol is *ultra vires*, as it steps into an area under the *exclusive* control of the Commission. In the opinion of City Attorney’s office, however, the ordinance does not seek to regulate or limit boxing or MMA. Rather, it is a liquor control measure directed towards such an event, which event can occur regardless of whether alcohol is sold. In Nebraska, a municipality may place harsher restrictions on the sale of alcohol and liquor than exist at state statute or regulation, so long as the additional restrictions are not inconsistent with or contrary to state statute or regulation. *See* NEB. REV. STAT. § 53-134.03; *Contemporary Ind. Mid-America, Inc. v. Neb. Liquor Control Comm’n*, 243 Neb. 345, 500 N.W.2d 525 (1993). It does not appear that this restriction—sale or alcohol at licensed boxing or MMA bouts—is inconsistent with or contrary to any particular liquor state statute or regulation, so the City Attorneys’ office believes this ordinance—§ 18-416—is consistent with state statutes and is within the City’s police power to enact and enforce. Thus, City Attorney’s office would defer any action on this requested change to the City Council or City staff, believing either direction would be consistent with state statute and regulation.]

A motion was made by Councilman Reynolds, seconded by Councilman Bentley to approve the first reading of Ordinance No. 2879. City Clerk Jines read the ordinance by title which following in its entirety:

ORDINANCE NO. 2879

AN ORDINANCE OF THE CITY OF ALLIANCE, NEBRASKA, AMENDING THE MUNICIPAL CODE SECTION 18-413 TO AMEND THE PROVISIONS RELATED TO UNARMED SPORTS, AND REPEALING PRIOR PROVISIONS OF THE MUNICIPAL CODE THAT ARE INCONSISTENT WITH THIS ORDINANCE, PROVIDING FOR AN EFFECTIVE DATE AND PUBLICATION IN PAMPHLET FORM.

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

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SECTION 1. Section 18-413. - Restrictions, within Article X. – Unarmed Sports of the City of Alliance, Nebraska Municipal Code is hereby amended in its entirety the following:

Unarmed Combat sports and unarmed combat competitions, which mean those activities and events under the direction, management, control, and jurisdiction of the Nebraska State Athletic Commission, are prohibited in the law enforcement jurisdiction of the city, unless the sports or competitions' promoters, managers, seconds, contestants, attending physicians, referees, matchmakers, judges, timekeepers, and other persons subject to licensure are properly registered, licensed, and permitted by the state athletic commissioner, pursuant to R.R.S. 1943, §§ 81-8,128-81-8,142.01 and all applicable regulations as may exist from time to time.

SECTION 2: This Ordinance shall become effective upon its passage, approval and publication, and shall be in pamphlet form.

Roll call with the following results:

Voting Aye: Jones, Mischnick, Dafney, Bentley, Reynolds.

Voting Nay: None.

Motion carried.

- Ordinance No. 2878 was next before Council on second reading for the approval of the rezoning request of William Brennemann. He is requesting the rezoning of a 6 acre tract of land in the Southeast Quarter of Section 32, Township 25 North, Range 47 West of the 6th P.M., Box Butte County, Nebraska. The following information was provided for Council:

[The City of Alliance is in receipt of an application for a rezone of a 6 acre tract of land located in the Southeast Quarter of Section 32, Township 25 North, Range 47 West of the 6th Principal Meridian, Box Butte County, Nebraska.

The land is currently zoned A, Agriculture. It is surrounded by A, Agriculture. The rezone will reduce the front setbacks from 50 feet to 15 feet, side setbacks from 10 to 0 feet, side street setbacks from 50 feet to 15 feet, and rear setbacks from NA to 15 feet. Access to the site is via CR 57 and Nebraska State Highway 2.

The Planning Commission and City staff have been working on Code revisions to Part II of the City of Alliance Municipal Code book. The Code revisions are currently with the City Attorney's office for their review. One of the revisions is the addition of "Veterinary Clinic" as a Conditional Use Permit to the Agriculture Zoning district. One of the goals of rewriting the zoning code was to eliminate or greatly reduce the necessity to continue spot zoning in the

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Extraterritorial Zoning Jurisdiction. This Code change would allow the proposed clinic with a Conditional Use Permit instead of a rezone to Highway Commercial. Depending on the City Attorney's timeline of review of the proposed Code revisions currently under way, staff would be willing to run the agriculture zoning code section alone before the rest of the Code is ready to allow Veterinary Clinics as a CUP; however, if the City Attorney is finished with his review of the code revisions before the next Planning Commission meeting, taking the Ag section of the Code alone would not be necessary.

The purpose of zoning is to evaluate and establish the best use(s) of a particular piece of property and separate incompatible land use types. Zoning does not work when "spot zoning" occurs. The nearest C-3 zoning district is approximately 1 mile away. Without the presence of other C-3 zoning in the vicinity, staff considers this a spot zoning. Spot zoning has the tendency to benefit the individual parcel owner while alienating the land uses surrounding the rezone. The proposed use of a parcel during a rezone may not always be how the property is used. Rezoning the parcel to highway commercial opens that parcel up to every land use allowed by the Code for that district, some of which are incompatible with the land uses surrounding the property.

The City of Alliance Planning Commission met at its regular meeting December 11, 2018 and voted yes on a recommendation to the Alliance City Council for the approval of the rezone of a 6 acre tract of land located in the Southeast Quarter of Section 32, Township 25 North, Range 47 West of the 6th Principal Meridian, Box Butte County, Nebraska, from A, Agriculture to C-3, Highway Commercial.]

A motion was made by Councilman Mischnick, seconded by Councilman Reynolds to approve the second reading of Ordinance No. 2878. City Clerk Jines read the ordinance by title which follows in its entirety.

#### ORDINANCE NO. 2878

AN ORDINANCE OF THE CITY OF ALLIANCE, NEBRASKA, DEALING WITH ZONING, SETTING FORTH CONDITIONS FOR PASSAGE, AND AMENDING THE DISTRICT ZONING MAP TO SHOW THAT A 6 ACRE TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 25 NORTH, RANGE 47 WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, BOX BUTTE COUNTY, NEBRASKA IS NOW INCLUDED AS A C-3, HIGHWAY COMMERCIAL DISTRICT FROM A, AGRICULTURE DISTRICT, AND REPEALING PRIOR SECTIONS.

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

SECTION 1. Section 115-76 of the Alliance Municipal Code is amended to provide as follows:

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115-76. DISTRICT MAP ADOPTED

(a) Boundaries of the districts, as enumerated in section 115-75 are hereby established as shown on a map prepared for that purpose, which map is hereby designated as the zoning district map; and said map, and all the notations, references and information shown thereon is hereby made as much a part of these regulations as if the same were set forth in full herein. The city planning commission shall keep on file in their offices an authentic copy of said map, and all changes, amendments, or additions thereto.

(b) When definite distances in feet are not shown on the zoning district map, the district boundaries are intended to be along existing street, alley or platted lot lines, or extensions of the same, and if the exact location of such lines is not clear, it shall be determined by the building inspector, due consideration being given to location as indicated by the scale of the zoning district map.

This is to certify that the Zoning District Map described in the Alliance Municipal Code, passed this 22<sup>nd</sup> day of January, 2019, is now the official Zoning District Map.

SECTION 2. Previously existing Section 115-76, and all ordinances, parts of ordinances, resolutions, and policies of the City of Alliance in conflict with the revisions set forth herein are hereby repealed.

SECTION 3. This ordinance shall be in full force and effect from and after its approval, passage, and publication according to law.

A motion was made by Councilman Jones, seconded by Councilman Reynolds to suspend the statutory rule requiring three separate readings of Ordinance No. 2878.

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

Voting Aye: Dafney, Bentley, Mischnick, Reynolds, Jones.

Voting Nay: None.

Motion carried.

Roll call vote to approve Ordinance No. 2878 on final reading with the following results:

Voting Aye: Dafney, Bentley, Mischnick, Reynolds, Jones.

Voting Nay: None.

Motion carried.

Mayor Dafney stated, "the passage and adoption of Ordinance No. 2878 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published."

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- Next before Council was the third reading of Ordinance No. 2877 which modifies the franchise regulations for cable television systems. The following information was provided for Council:

[The City of Alliance Code provides for cable television regulation in Chapter 18, Article XI of the Municipal 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 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

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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.

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.]

A motion was made by Councilman Jones, seconded by Councilman Mischnick to approve the third 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.

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

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

**1). 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.

**2). 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:
  - i) provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in that Cable System; or
  - ii) otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System.
- g) "Cable Service" means:
  - i) the one-way transmission to Subscribers of: (i) Video Programming or (ii) Other Programming Service; and
  - ii) 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:
  - i) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations;
  - ii) a facility that serves Subscribers without using any Public Way;
  - iii) 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.
  - iv) an open video system that complies with § 653 of the Cable Act.
  - v) any system exempted under the Cable Act.

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- 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:
  - i) 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);
  - ii) Agreed upon capital costs incurred by the Cable Operator for PEG, or governmental access facilities;
  - iii) 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
  - iv) any fee imposed under the copyright laws of the United States.

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- 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.
- 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.

**3). 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.

**4). 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.

**5). 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.

**6). 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 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.

**7). 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.

**8). 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.

**9). 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 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

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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.

**10). 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 at Umbrella Liability	\$1,000,000 per occurrence C.S.L. \$1,000,000 per occurrence C.S.L.

- 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.

**11). 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

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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.

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.

## **12). 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.

## **13). 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.

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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.

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.

#### **14). 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.

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- (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.
- (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.

**15). 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.

**16). 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.

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- (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 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

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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.

- (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.

**17). 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). Emergency Alert System.**

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

**19). 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.

**20). Franchise.**

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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:

- 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:
  - i) the term or duration of the Franchise;
  - ii) an agreement to comply with this Article;
  - iii) any applicable construction, upgrade or rebuild schedule; and
  - iv) 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:
  - i) The Cable Operator may utilize the Public Ways and those Easements dedicated to the public use.
  - ii) 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.

**21). 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.

**22). 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:

- 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.

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- 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.

### **23). 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:

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- (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 11a.m. and 11p.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.

**24). 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.

**25). 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

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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.
  - 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.

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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.

**26). 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.

**27). 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.

**28). 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.

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- 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.

**29). 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.

Roll call vote with the following results:

Voting Aye: Bentley, Dafney, Mischnick, Reynolds, Jones.

Voting Nay: None.

Motion carried.

Mayor Dafney stated, “the passage and adoption of Ordinance No. 2877 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published.”

- Resolution No. 19-04 which authorizes the purchase of two pickups from Cover-Jones Motor Company for the Water and Street Department for a total of \$65,129.00 was the next matter before Council. The following information was provided for Council:

[The 2018-19 Fiscal Year Budget included funding for the purchase of two pickups; one for the Street Department (\$50,000) the other for the Water Department (\$35,000).

The Street Department will be replacing a 1999 Chevy 1500 with 78,000 miles (Unit 909). The Water Department will be replacing a 2012 Chevy 1500 with 109,000 miles (Unit 1403). The vehicles being replaced with either be sold or made available to other departments for use as determined for the best interest of the City by the City Manager.

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Staff has collected quotes from the Nebraska State Purchasing Bureau as well as Cover-Jones as indicated below.

Street Department vehicle replacement:

<b>Vendor</b>	<b>Description</b>	<b>Bid</b>
Nebraska State Purchasing Contract	2019 Ford F-150 Regular Cab 4x4	\$31,907
Cover-Jones Motor Company Quote	2019 Ford F-150 Regular Cab 4x4	\$31,907

Water Department vehicle replacement:

<b>Vendor</b>	<b>Description</b>	<b>Bid</b>
Nebraska State Purchasing Contract	2019 Ford F-150 Super Cab 4x4	\$33,222
Cover-Jones Motor Company Quote	2019 Ford F-150 Super Cab 4x4	\$33,222

Public Works Director Ross Grant is recommending both purchases be made from Cover-Jones Motor Company of Alliance, NE as they were able to meet the State bid. The Street Department purchase will be a 2019 Ford F-150 Regular Cab 4x4 in the amount of \$31,907 from Account No. 24-41-41-59-960. The Water Department purchase will be a 2019 Ford F-150 Super Cab 4x4 in the amount of \$33,222 from Account No. 08-52-52-59-960.]

A motion was made by Councilman Jones, seconded by Councilman Reynolds to approve Resolution No. 19-04 which follows in its entirety:

RESOLUTION NO. 19-04

*WHEREAS*, The City of Alliance Street Department is desiring to replace a 1999 Chevy 1500 Pickup and the Water Department is desiring to replace a 2012 Chevy 1500 pickup; and

*WHEREAS*, Cover-Jones Motor Company of Alliance, Nebraska will honor the low bid as provided by the State of Nebraska for the replacement of both vehicles; and

*WHEREAS*, Staff is recommending the purchase of a 2019 Ford F-150 4x4 Pickup from Cover Jones Motor Company, Alliance, Nebraska, in the amount of Thirty-one Thousand Nine Hundred Seven and no/100<sup>th</sup> Dollars (\$31,907) for the Street Department; and

*WHEREAS*, Staff is recommending the purchase of a 2019 Ford F-150 Super Cab 4x4 Pickup from Cover-Jones Motor Company of Alliance, Nebraska, in the amount of Thirty-three

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Thousand Two Hundred Twenty-two and no/100<sup>th</sup> Dollars (\$33,222) for the Water Department; and

*WHEREAS*, Adequate funding is available for these purchases from the Street Capital Outlay-Vehicles Account No. 24-41-41-59-960 and the Water Capital Outlay-Vehicles Account No. 08-52-52-59-960.

*NOW, THEREFORE, BE IT RESOLVED* by the Mayor and Council of the City of Alliance, Nebraska, that Mayor Dafney be and hereby is authorized to enter into a purchase agreement with Cover Jones Motor Company, Alliance, Nebraska, in the amount of Thirty-one Thousand Nine Hundred Seven and no/100<sup>th</sup> Dollars (\$31,907) for the Street Department pickup and in the amount of Thirty-three Thousand Two Hundred Twenty-two and no/100<sup>th</sup> Dollars (\$33,222) for the Water Department pickup.

Roll call vote with the following results:

Voting Aye: Bentley, Dafney, Mischnick, Reynolds, Jones.

Voting Nay: None.

Motion carried.

- The next item for Council was Resolution No. 19-05 which awards the 12.47 kV Distribution Line Rebuild for the Airport Area to IES Commercial, Inc. of Holdrege, NE. in the amount of \$366,175. Council was provided with the following information:

[The City of Alliance has budgeted for system rebuilds and maintenance on electric lines. This year the 12.47kV Distribution Line by the Airport was identified for a total rebuild. The City worked with our engineers, Olsson Associates to bid the project. The City received two bids for this project with the successful bidder being IES Commercial, Inc. of Holdrege, NE in the amount of \$366,175. The City has worked with IES Commercial, Inc. in the past and was pleased with their work. With this contract IES Commercial, Inc. will be supplying the labor, services, supervision and tools necessary for the rebuild. The City will be providing the major portion of the materials such as poles, cross-arms, lines and transformers. The resolution also includes field change order authority not to exceed 5% should it be necessary.]

A motion was made by Mayor Dafney, seconded by Councilman Bentley to approve Resolution No. 19-05 which follows in its entirety:

#### RESOLUTION NO. 19-05

*WHEREAS*, The City of Alliance owns and operates the Alliance Municipal Electric System; and

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*WHEREAS*, In order to maintain the quality and efficiency of our distribution system the City is continuously performing upgrades and maintenance; and

*WHEREAS*, The City working with our engineers prepared a Bid Invitation which included the plans and specifications for the 12.47 kV Distribution Line Rebuilds – Airport Area which were advertised; and

*WHEREAS*, Two (2) responses were received to our Bid Invitation; and

*WHEREAS*, The bid of IES Commercial, Inc. of Holdrege, NE appears to be the lowest, responsive, and responsible bid in the amount of Three Hundred Sixty-six Thousand One Hundred Seventy-five Dollars and 10/100ths (\$366,175.00).

*NOW, THEREFORE, BE IT RESOLVED*, by the Mayor and City Council of Alliance, Nebraska, the Mayor is authorized to enter into a contract with IES Commercial, Inc. of Holdrege, NE for the 12.47 kV Distribution Line Rebuilds – Airport Area Project subject to terms and conditions of the bid.

*BE IT FURTHER RESOLVED*, that the Electric Superintendent is authorized to make field change orders not to exceed five percent (5%) of the total contract amount without further Council approval.

*BE IT FURTHER RESOLVED*, that the Mayor is authorized to execute the contract associated with this project.

Roll call vote with the following results:

Voting Aye: Bentley, Dafney, Mischnick, Reynolds, Jones.

Voting Nay: None.

Motion carried.

- Board appointments and resignations were next for Council.

A motion was made by Councilman Mischnick, seconded by Councilman Jones to appoint Jeff Jensen, the current Panhandle Men's Club President, to the Golf Course Advisory Board with a term expiring December 31, 2021.

Roll call vote with the following results:

Voting Aye: Dafney, Bentley, Mischnick, Reynolds, Jones.

Voting Nay: None.

Motion carried.

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Next, a motion was made by Councilman Mischnick, seconded by Councilman Bentley to accept the resignation of Byron Reed from the Alliance Housing Authority. This resignation leaves three vacancies on this board and they now do not have a quorum.

Roll call vote with the following results:

Voting Aye: Dafney, Bentley, Mischnick, Reynolds, Jones.

Voting Nay: None.

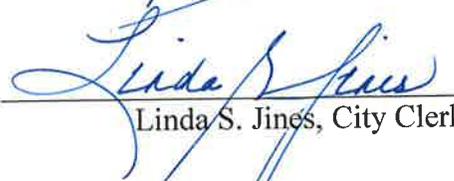
Motion carried.

The following Board vacancies were announced: Board of Adjustment (2), Downtown Improvement Districts A-2 (1), Economic Development Plan Citizen Advisory Board (3), Housing Authority (3), junior ex-officio member of the Library Board (1), Park and Tree Board (1) and Planning Commission (1). Anyone interested in serving on these Boards should contact the City Clerk's Office. Information on all of the City Boards is also available on our web site, [www.cityofalliance.net](http://www.cityofalliance.net).

- Prior to adjourning the meeting, Councilman Bentley requested staff to review and update the City Council Travel Policy for consideration at a future Council meeting.
- Mayor Dafney stated, "there being no further business to come before the Alliance City Council, the meeting is adjourned at 7:20 p.m."

(SEAL)

  
Mike Dafney, Mayor

  
Linda S. Jines, City Clerk

