

ALLIANCE CITY COUNCIL

REGULAR MEETING, TUESDAY, MAY 17, 2022

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

The Alliance City Council met in a Regular Meeting, May 17, 2022, at 7:00 p.m. in the Alliance Learning Center Community Meeting Room, 1750 Sweetwater Avenue, Alliance, Nebraska. A notice of meeting was published in the Alliance Times Herald on May 11, 2022. 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 May 17, 2022 regular meeting of the Alliance, Nebraska City Council at 7:00 p.m. Present were Mayor Dafney, Council Members Mischnick, Jones, and McGhehey. Also present were City Attorney Hoelsing, City Manager Sorensen, Finance Director Waggener and City Clerk Johnson.

- Mayor Dafney read the Open Meetings Act Announcement.
• Councilman Bentley was excused from the meeting.
• The first item on the agenda was a proclamation acknowledging May 21, 2022 as National Kids to Park Day which was accepted by Mr. Russell Saito. Councilman McGhehey read the following proclamation:

PROCLAMATION

WHEREAS, May 21, 2022, is the twelfth Kids to Parks Day organized and launched by the National Park Trust held annually on the third Saturday of May; and

WHEREAS, Kids to Parks Day empowers kids and encourages families to get outdoors and visit local parks, public lands, and waters; and

WHEREAS, we should encourage children to lead a more active lifestyle to combat issues of childhood obesity, diabetes, hypertension, and hypercholesterolemia; and

WHEREAS, Kids to Parks Day will broaden children's appreciation for nature and outdoors; and

WHEREAS, Kids to Parks Day will recognize the importance of recreating responsibly while enjoying the benefits of the outdoors; and

NOW THEREFORE, The Alliance City Council does hereby proclaim May 21, 2022, as Kids to Park Day in Alliance, NE and encourages all children to enjoy the parks within the community.

- The Consent Calendar was the next item on the agenda. A motion was made by Councilman Jones and seconded by Councilman Mischnick to approve the Consent Calendar as follows:

CONSENT CALENDAR – May 17, 2022

1. **Approval:** Minutes of the Regular Meeting, May 3, 2022.
2. **Approval:** Payroll Costs for May 6, 2022: \$324,221.80.
3. **Approval:** Claims against the following funds: 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; \$1,445,874.43.
4. **Approval:** Cemetery Certificate issuance for the South Half (S½) of the Southwest Quarter (SW¼) of Lot One (1), Section Five (5), Block Twenty (20), to Sandra J. Sanders.
5. **Approval:** Alliance Volunteer Fire Department roster update by removing Alawandus Davis.

NOTE: City Manager Sorensen and Finance Director Waggener have reviewed these expenditures and to the best of their knowledge confirm 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, Jones and McGhehey.

Voting Nay: None.

Motion carried.

- Next for Council was the first reading of Ordinance No. 2942 which will amend Chapter 22 of the Alliance Municipal Code. The following information was provided:

[City staff and counsel made an in-depth examination of the City's offense code—Chapter 22. The City's offense code was inadequate in many areas, and the City police department often has difficulty effectively policing under current state statutes, many of which do not address more minor, peace-disturbing type conduct that can be better addressed with a City ordinance. Based on that examination, City staff and counsel are recommending wholesale ordinance changes included in the proposed Ordinance.

The proposed Ordinance uniformly addresses a number of issues previously presented by the offense code, incorporates existing portions of the offense code, and introduces a number of ordinance offenses that are commonly found in other cities of the first class.

Staff recommends the adoption of the Ordinance on first reading, which will replace in total Chapter 22 (the offense code) and will address the concerns and objectives discussed above.]

A motion was made by Councilman Jones, seconded by Councilman Mischnick to approve the first reading of Ordinance No. 2942. City Clerk Johnson read the ordinance by title which follows in its entirety:

ORDINANCE NO. 2942

AN ORDINANCE AMENDING THE ALLIANCE MUNICIPAL CODE; AMENDEING SECTION 1-8 REGARDING PENALTIES FOR MUNICIPAL CODE VIOLATIONS; AMENDING SECTION 8-42 REGARDING TRESPASS AT A MUNICIPAL CEMETERY; REPEALING AND REPLACING CHAPTER 22, OFFENSES AND MISCELLANEOUS PROVISIONS; REPEALING EXISTING ORDINANCES, RESOLUTIONS, POLICIES, OR PORTIONS THEREOF NOT CONSISTENT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1: The City Code, at Section 1-8 – General Penalty; continuing violations. is hereby amended as follows:

“Sec. 1-8. - General penalty; continuing violations.

(a) In this section, the term “violation of this Code” means any of the following:

- (1) Doing an act that is prohibited or made or declared unlawful, an offense, a violation or a misdemeanor by ordinance or by rule or regulation authorized by ordinance;

- (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance;
- (3) Failure to perform an act if the failure is prohibited or is made or declared unlawful, an offense, a violation or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.
- (4) Aiding, abetting, procuring, encouraging, requesting, advising or inciting another to commit a violation of this Code, as above defined.

(b) Except as otherwise provided by law or ordinance:

- (1) A person convicted of a violation of this Code that is designated as a Class I violation shall be punished by a maximum of seven days imprisonment, or a fine of not more than \$1,000.00, or both.
- (2) A person convicted of a violation of this Code that is designated as a Class II violation shall be punished by a maximum fine of not more than \$1,000.00. All violations not specifically designated as Class I violations shall be Class II violations.
- (3) With respect to violations of this Code that are continuous with respect to time, each day the violation continues is a separate offense;
- (4) With respect to violations of this Code that are not continuous with respect to time, each day the violation continues is a separate offense.

(c) The imposition of a penalty does not prevent suspension or revocation of a license, permit or franchise or other administrative sanctions;

(d) Violations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent injunctive relief or nuisance abatement. Action by the city to abate a nuisance does not prevent imposition of a penalty for a violation of this Code. Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as part of the judgment in the case.

(e) Any person violating any of the provisions of this Code making gambling illegal or in any other way dealing with gambling upon conviction thereof, shall be fined as hereinbefore provided; and, as part of the judgment of conviction, all gambling equipment and paraphernalia seized and exhibited in court, shall be ordered confiscated and destroyed.”

SECTION 2: The City Code, at Section 8-42 – Trespassing. is hereby amended as follows:

“It shall be unlawful for any person to enter onto the cemetery for any purpose after posted open hours without the written permission of the city manager or his designee.”

SECTION 3: The City Code, at Chapter 22 – Offenses and Miscellaneous Provisions, provides for municipal code offenses and misdemeanors. To provide for a more robust and comprehensive code of offenses, Chapter 22 – Offenses and Miscellaneous Provisions of the City Code is hereby repealed in its entirety, and replaced in total as follows:

“ARTICLE I. - IN GENERAL

Sec. 22-1. - Obstructing or damaging ditches unlawful.

It is unlawful for any person to willfully, maliciously, wantonly or negligently fill up, obstruct, or otherwise damage any ditch or ditches lawfully constructed in the city.

Sec. 22-2. – Citation; failure to appear

It shall be unlawful for any person to fail to appear in County Court on a charge of violation of any ordinance of the City as directed in a citation issued by the County Court, or by the City Attorney or one of his or her deputies, or a police officer of the City, as authorized by statute or by any provision of this Municipal Code.

Sec. 22-3. – Aiding and abetting.

A person who aids, abets, procures, or causes another to commit any offense may be prosecuted and punished as if the person were the principal offender.

Secs. 22-4—22-20. - Reserved.

ARTICLE II. - OFFENSES INVOLVING PROPERTY RIGHTS

Sec. 22-21. - Trespassing on public property.

It shall be unlawful for any person to enter onto, or remain upon city facilities, including but not limited to warehouses, the golf course, airport facilities and hangars, the police shooting range, the cemetery, the library and the city pool after posted open hours without the written permission of the city manager or his designee. A violation of this section shall be a Class I violation.

Sec. 22-22. -Entry, remaining on property; when prohibited

It shall be unlawful for any person if he knows that he is not licensed or privileged to do so:

- (1) To enter or secretly remain in any building or occupied structure, or any separately secured or occupied portion thereof, or
- (2) To enter or remain in any place as to which notice against trespass is given by (a) actual communication to the actor, or (b) posting in a manner prescribed by law or reasonably likely to come to the attention of intruders, or (c) fencing or other enclosure manifestly designed to exclude intruders. Provided, it is an affirmative defense to prosecution under subparagraph (1) above that the building or occupied structure was abandoned, and to prosecution under either subparagraph (1) or subparagraph (2) above that the premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises, or that the actor reasonably believed that the owner of the premises or other person empowered to license access thereto would have licensed him to enter or remain.
- (3) A violation of this section shall be a Class I violation.

Sec. 22-23. – Parking vehicle on property not owned by owner of the vehicle; when prohibited; removal; rights of City and owner of vehicle.

- (1) It shall be unlawful for any person to park a vehicle on any property which is not owned by the person parking the vehicle, where:
 - (a) Notice against trespass has been given by (a) actual communication to the actor, or (b) posting in a manner prescribed by law or reasonably likely to come to the attention of intruders, or (c) fencing or other enclosure manifestly designed to exclude intruders, or
 - (b) Considering all relevant circumstances, a reasonable person would know that he or she is not licensed or privileged to do so.
- (2) A police officer may remove or convey, or cause to be removed and conveyed, by towing or otherwise, any vehicle parked in violation of this section. The vehicle may be taken to the vehicle impound or to a lot maintained by a business that was hired to tow the vehicle.
- (3) The disposition of a vehicle removed pursuant to this section, and the rights of the owner of such vehicle, shall be as provided in Chapter 22, Article 9 of this Municipal Code, except that section 22-9-6 shall have no application to vehicles removed pursuant to his section.

Sec. 22-24. - Unlawful acts constituting littering.

It shall be unlawful and in violation of this section for anyone to commit the offense of littering.

- (1) Any person who deposits, throws, discards, or otherwise disposes of any litter on any public or private property, or in any waters, commits the offense of littering unless:
 - a. Such property is an area designated by law for the disposal of such material and such person is authorized by the proper public authority to so use such property; or
 - b. The litter is placed in a receptacle or container installed on such property for such purpose.
- (2) The term "litter," as used in this section, means all waste material susceptible of being dropped, deposited, discarded, or otherwise disposed of by any person upon any property in the state, but does not include wastes of primary processes of farming or manufacturing. The term "waste material," as used in this subsection, means any material appearing in a place or in a context not associated with that material's function or origin.
- (3) Whenever litter is thrown, deposited, dropped, or dumped from any motor vehicle or watercraft in violation of this section, the operator of such motor vehicle or watercraft commits the offense of littering.

Sec. 22-25. – Larceny; prohibited

It is hereby declared unlawful for any person within the City to steal any money, goods or chattels of any kind whatsoever. Any person who shall within the City steal property of any kind whatever, whether the same be wholly in money or wholly in property of some other character, or partly in money and partly in other property, of the value of less than three hundred dollars (\$300.00) shall be deemed guilty of. A violation of this section shall be a Class I violation.

Sec. 22-26. – Theft by shoplifting

It shall be unlawful for any person to commit a theft by shoplifting. A person commits a theft by shoplifting when he or she, with the intent of appropriating merchandise to his or her own use without paying for the same or to deprive the owner of possession of such property or its retail value, in whole or in part, does any of the following:

- (1) conceals or take possession of the goods or merchandise of any store or retail establishment,
- (2) alters the price tag or other price marking on goods or merchandise of any store or retail establishment,
- (3) transfers the goods or merchandise of any store or retail establishment from one container to another,
- (4) interchanges the label or price tag from one item of merchandise with a label or price tags for another item of merchandise, or

- (5) causes the cash register or other sales recording device to reflect less than the retail price of the merchandise.

A violation of this section shall be a Class I violation

Sec. 22-27. – Destruction of property; prohibited

It shall be unlawful for any person within the city purposely, willfully, maliciously, or recklessly to destroy or injure or aid in destroying or injuring, in any manner, any real or personal property of any description, belonging to another person, or in charge of another as agent or factor. A violation of any provision of this section is a violation. A violation of this section shall be a Class I violation.

Sec. 22-28. – Breaking glass; defacing building; prohibited

It shall be unlawful for any person or persons to willfully, maliciously or wantonly break the glass or any part thereof, or otherwise, mar, or in any manner deface any building, not his own, within the City. A violation of any provision of this section is a violation. A violation of this section shall be a Class I violation.

Sec. 22-29. – Trees; destruction; injuring; prohibited

It shall be unlawful for any person or persons to willfully, maliciously or wantonly cut down, destroy, or injure, by girdling, tapping or otherwise, any tree not his own that is standing or growing for shade, ornament or any other useful purpose within the City. A violation of any provision of this section is a violation. A violation of this section shall be a Class I violation.

Sec. 22-30. – Public utility property; injuring; prohibited

It shall be unlawful for any person or persons, company or association of persons to interfere with, cut, injure, remove, break, destroy or deface, any pole, wire, fixture, instrument, or other property of any telegraph, telephone, cable television, electric or gas company or association used in the operation of any telegraph, telephone, cable television, electric line or gas business within the City. A violation of any provision of this section is a violation. A violation of this section shall be a Class I violation.

Sec. 22-31. – Molesting property; prohibited

It shall be unlawful for any person or persons within the City to wantonly or prankishly daub or mark the windows of others with soap or other substance, or remove signs, overturn out-buildings, ground swings, or in any manner disturb or molest any property of another at any time. A violation of any provision of this section is a violation.

Sec. 22-32. – Swimming, boating, prohibited on city property; exceptions.

It shall be unlawful for any person to swim or boat on any property owned by the City, provided, however, that it shall not be unlawful to swim in municipal swimming pools, and provided further that it shall not be unlawful to kayak, canoe, or use non-motorized watercraft. A violation of this section shall be a Class I violation.

Secs. 22-33—22-47. - Reserved.

ARTICLE III. - OFFENSES INVOLVING PUBLIC SAFETY

Sec. 22-48. - Throwing articles at vehicles prohibited.

No person shall throw or threaten to throw any article into or at any vehicle or at the driver thereof or any passenger therein. A violation of this section shall be a Class I violation.

Sec. 22-49. - Possession of firearms and dangerous weapons in city facilities or on city real estate.

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

Dangerous weapon means any firearm, stun gun, knife, switchblade knife, any gun which releases any propelled object by spring mechanism, compressed air or compressed gas, or any other instrument the use of which is intended or likely to cause death or bodily injury.

Knife means any dagger, dirk, knife, or stiletto with a blade over 3½ inches in length or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds, other than knives used for culinary purposes.

Stun gun means any handheld electronic device that is powered by an internal power source such as batteries, and that is capable of introducing an electrical current into the body of a person which when introduced to the body shall be capable of disrupting a person's central nervous system and rendering the person temporarily incapable of normal functioning, for any period of time whatsoever. The electrical current may be introduced into the human body by means of direct pressure to the body from fixed electrodes on the electronic device and/or by one or more electrodes attached to a length of wire or other connection and which upon being fired from a firearm or any other mechanical device, strikes the human body and produces the reaction described herein.

(2) *Prohibited.*

(a) It shall be unlawful for any person to knowingly possess or cause to be present a firearm or other dangerous weapon on city real estate or any improvements thereon at the following locations:

i. Municipal Building Complex, located at 320 Laramie, Alliance, Nebraska;

- ii. Fire Station, located at 315 Cheyenne, Alliance, Nebraska;
 - iii. Alliance Learning Center, located at 1750 Sweetwater, Alliance, Nebraska;
 - iv. Utility Facility, located at 1313 West First Street, Alliance, Nebraska.
- (b) This section shall not apply to possession of a firearm or other dangerous weapon by:
- i. An officer, agent, or employee of a state or a political subdivision thereof who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law, while on duty or off duty.
 - ii. An instructor or registered student when in connection with an educational or training program.
 - iii. City authorized shows, performances and/or exhibitions displaying or using guns and/or knives.

A violation of this section shall be a Class I violation.

Sec. 22-50. - Discharge of firearms; act unlawful; exception.

It is unlawful for any person, except a law enforcement officer in the performance of his duties, or a person designated by the city manager or designee to enact the waterfowl management policy, to fire or discharge a revolver or pistol of any description, shotgun, rifle, air gun, gas-operated gun, spring gun or any bow made for the purpose of throwing or projecting missiles of any kind by any means whatsoever within the city limits, whether such instrument is called by any name set forth herein or by any other name; provided, however, nothing in this section shall prevent the use of any such weapon in a city-approved shooting gallery. A violation of any provision of this section is a violation. This section shall not prohibit the discharge of firearms by:

- (1) Persons exercising the right of self-defense or defense of others;
- (2) Members of the armed forces of the United States or the national guard when performing official duties.
- (3) An animal control officer as defined in Chapter 2 in the discharge of his or her duty;
- (4) Any person who in places or during activities in which the City Manager or the designee of the City Manager has approved under special regulations for practicing the use of a firearm, or giving exhibitions, or holding competitions in the use of firearms which are sponsored by a law enforcement organization or the Nebraska Game and Parks Commission and are monitored and supervised by such organization.

A violation of this section shall be a Class I violation.

Sec. 22-51. - False alarms; unlawful.

It shall be unlawful for any person to intentionally and without reasonable cause raise any false alarm of fire by any means.

Sec. 22-52. - Fire extinguisher; destroy or injure; prohibited.

It shall be unlawful for any person to injure in any manner, or destroy through malice or carelessness, any fire extinguishing apparatus.

Sec. 22-53. – Public Building; exit doors; obstructions; lighting; violations; classification

- (1) The doors of all exits from buildings occupied as churches, school buildings, theaters for dramatic, operatic, or similar performances, or as picture shows, or used for any public gatherings or meetings shall, during every performance, meeting, or gathering within the building, be and remain unbarred and unlocked. No temporary seats or obstructions of any character shall, while such building is in use, be permitted to be or remain in any aisle, passageway, exit, entrance, or stairway. No obstructions of any character, either movable or immovable, shall, while any such building is in use, be placed or left in any lobby or in front of any outer door or exit. No person shall be permitted to remain in any aisle or on any stairway of any such building while the building is in use. The hallways and stairways in such buildings shall be well lighted.
- (2) A violation of any provision of this section is a violation. Each twenty-four (24) hours of refusal or neglect to obey any provision of this section shall be deemed a separate and distinct offense.

Sec. 22-54 – Sex Offender Residency Restrictions

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

Child-care facility means a place with a license issued under the Nebraska Child-Care Licensing Act, Sections 71-1908 to 71-1923 of the Nebraska Revised Statutes, as currently existing or hereafter amended.

Residence means a place where a person regularly sleeps, where a person has established his or her home, and where he or she is habitually present, and to which, when he or she departs, he or she intends to return. A residence may include more than one location and may be mobile or transitory. Temporarily domiciled means a place at which a person actually lives or stays on a temporary basis, even though he or she may plan to return to his or her permanent address or to another temporary address. For purposes of this chapter, a temporary domicile means any place at which the person actually lives or stays for a period

of at least five working days. Residency may be shown by, among other evidence, receipt of mail at the premises or identification of the premises as a residence on a driver's license, vehicle registration or other document.

School means a public, private, denominational, or parochial school which meets the requirements for accreditation or approval prescribed in Chapter 79 of the Nebraska Revised Statutes.

Sexual Predator means an individual who is required to register under the Nebraska Sex Offender Registration Act, or any person required to register under a similar law of another state, who has a high risk of recidivism as determined by the Nebraska State Patrol under Neb. Rev. Stat. § 29-4013, as amended from time to time, and who has victimized a person 18 years of age or younger.

- (2) *Prohibited Conduct.* It is unlawful for any person who is subject to the Nebraska Sex Offender Registration Act, classified as a sexual predator as herein defined, or similar requirement or law of any other state, to reside within 500 feet of any child-care facility or school as defined herein. For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to the nearest outer boundary line of a public or nonpublic elementary or secondary school or a child-care facility.
- (3) *Exceptions.* A person residing within 500 feet of any child-care facility or school does not commit a violation of this section if any of the following apply: (a) resides within a prison or a correctional or treatment facility operated by the state or a political subdivision; (b) established a residence before July 1, 2022, and has not moved from that residence; (c) established a residence after July 1, 2022, and the school or child-care facility triggering the restriction was established after the initial date of the sexual predator's residence at that location; or the person who becomes in violation of this chapter because of annexation into the City.

A violation of this section shall be a Class I violation.

Secs. 22-55—22-77. - Reserved.

ARTICLE IV. - OFFENSES INVOLVING PUBLIC PEACE AND ORDER

Sec. 22-78. - Disorderly conduct.

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

Disorderly conduct means:

- (a) Any activity which intentionally disturbs the peace and quiet of any person, family or neighborhood, including, but not limited to:
 - i. Quarreling
 - ii. Engaging in lewd indecent or lascivious behavior;
 - iii. Any other act or conduct tending to disturb the peace and quiet of the City or any person.
 - (b) Engaging in any riotous or tumultuous conduct.
 - (c) Intentionally, knowingly or recklessly causing bodily injury to another person;
 - (d) Threatening another in a menacing manner;
 - (e) Urinating or defecating in public or on public property;
 - (f) Engaging in a fight entered into by mutual consent of the participants or otherwise;
 - (g) Words spoken with the intent to promote or incite a riot or fight;
 - (h) Using or threatening to use violence, force, physical interference or obstacle to intentionally obstruct, impair or hinder the enforcement of the penal law or preservation of the peace by a peace officer acting under color of his official authority; or
 - (i) Being an inmate of a disorderly house or attend or visit any such house.
 - (j) Taking part in any disorderly assembly.
 - (k) Any other activity or conduct which any member of the general public of ordinary intelligence would consider a breach of the peace.
- (2) *Prohibited.* It shall be unlawful for any person to participate in an activity that constitutes disorderly conduct.
- (3) *Exceptions.* A person designated by the city manager or designee acting within the scope of their authority in the implementation of the waterfowl management policy shall not be in violation of this section for actions that would violate subsection (a) or (h) of the definition of “disorderly conduct” in subsection (1) of this section.

A violation of this section shall be a Class I violation.

Sec. 22-79. – Disturbing peace; prohibited

It shall be unlawful for any person or person within the City, to disturb the peace and quiet of any other person, family or neighbor, on any public assembly assemblies of persons for religious worship or for any other purpose, by any loud or unusual noise, boisterous laughing or talking, hollering, quarreling, swearing, obscene or indecent language, or by any other manner or device whatsoever. A violation of any provision of this section is a violation. A violation of this section shall be a Class I violation.

Sec. 22-80. – Disorderly house; defined

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

Disorderly house means:

- (a) Any room, house, building, structure, place or premises wherein or upon any unlawful or illegal acts are committed in violation of local state or federal law, or which are kept in such a manner as to disturb, annoy or scandalize the public generally, or person within a particular neighborhood, is hereby declared to be a disorderly house.
 - (b) Any room, house, building, structure, place, or premises which are kept, maintained, used, erected, established, or run for any of the following purposes is hereby declared to be a disorderly house, provided, however, that this shall not be deemed or construed to be conclusive, limiting or restrictive:
 - (i) Prostitution, pandering, or public indecency as those terms are defined in this Code or the statutes of Nebraska;
 - (ii) Unlawful manufacture, cultivation, growth, production, processing, sale, distribution, storage, use or possession for any unlawful manufacture, or use of any controlled substance as that term is defined in the statutes of Nebraska;
 - (iii) Gambling as that term is defined in the statutes of Nebraska; gambling devices as that term is defined in the statutes of Nebraska;
 - (iv) Acts of disturbing the peace or disorderly conduct as those terms are defined elsewhere in this municipal code;
 - (v) The reception, retention, or disposition of stolen moveable property of another;
 - (vi) Clairvoyance, fortunetelling, or divination.
- (2) *Prohibited; nuisance.* It shall be unlawful for the owner, lessee, renter, proprietor, or any other person or persons to keep run or maintain a disorderly house, or to knowingly collect or permit to be collected therein persons who are engaging in any unlawful act or to knowingly make, cause or permit, or suffer to be made therein any loud or improper noise to the annoyance or

disturbance of any person or neighborhood. A disorderly house is declared to be a public nuisance. A violation of this section is a violation.

(3) *Prohibited; inmate; visiting.* It shall be unlawful for any person to become or remain an inmate of any disorderly house, or to frequent or visit with knowledge of, and participation in, the illegal activities occurring therein.

(4) *Disorderly house; abatement procedure.*

(a) The procedures in this section are applicable in the event of repeated incidents of the type described in Section Disorderly house; defined (1). For purposes of this section, “repeated incidents” means two or more of such incidents within the immediately preceding twelve-month period, which incidents are documented in writing by a law enforcement agency. Such incidents need not have resulted in a criminal conviction. The procedures in this section are also applicable to the situations described in Section Disorderly house; defined (1).

(b) The Police Chief may give notice to the owner or occupants of the disorderly house to cease the conduct. The notice shall be in writing, shall be served personally or by certified mail, and shall contain the following:

(i) The location of the disorderly house;

(ii) A description of the conduct which constitutes the room, house, building, structure, place, or premises a disorderly house;

(iii) An order to cease the conduct;

(iv) A statement that if the conduct continues the City may take such legal action as may be necessary to restrain or suppress the conduct, specifically including the seeking of an injunction in the District Court.

(c) Within five (5) days after receipt of such notice, the owner or occupant may make a written request for a hearing before the City Council. At such hearing, the City Council shall determine whether the room, house, building, structure, place, or premises is a disorderly house. If the City Council determines that the room, house, building, structure, place, or premises is a disorderly house, the City Council may authorize the appropriate city officers to commence the appropriate action in court to suppress the conduct if the conduct does not cease.

A violation of this section shall be a Class I violation.

Sec. 22-81. – Excessive noise; finding, declaration.

It is found and declared that:

- (1) the making and creation of excessive, unnecessary, or unusually loud noises within the corporate limits of the City is a condition that has existed for some time, and the extent and volume of such noises is increasing,
- (2) the making, creation, or maintenance of such excessive unnecessary or unusually loud noises which are prolonged, unusual, or unnatural in their time, place, and use affect and are a detriment to public health, comfort, convenience, safety, welfare, and prosperity of the inhabitants of the City, and
- (3) the necessity in the public interest for the provisions and prohibitions concerning noise which are hereinafter contained is hereby declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the City and its inhabitants.

A violation of this section shall be a Class I violation.

Sec. 22-82. – Assaults; threats; battery; prohibited

It is hereby declared unlawful for any person within the City to assault or threaten another in a menacing manner or strike or injure another. Any person who shall violate any of the provisions of this section shall be deemed guilty of misdemeanor. A violation of this section shall be a Class I violation.

Sec. 22-83. – Assaults; provoking; prohibited

It shall be unlawful for any person or persons within the City intentionally to provoke or attempt to provoke an assault upon himself or another by the uttering of grossly vile or insulting epithets applied to the assailed party or one so attempting to commit an assault, or to curse or swear at a person or use grossly vile names, or slander or abuse the character of another person with the intention of provoking an assault by such person. A violation of this section shall be a Class I violation.

Sec. 22-84. – Police; resisting; hindering; refusal to assist; prohibited.

It shall be unlawful for any person knowingly or willfully to hinder, obstruct or resist any police officer or any policeman in making any arrest or performing any other duty of his office, or to refuse or neglect to assist any police officer or policemen when called upon by him in the making of any arrest, or the conveying of a prisoner to jail. A violation of this section shall be a Class I violation.

Sec. 22-85. – Alcoholic liquor; consumption; open containers; places unlawful.

It shall be unlawful for any person:

- (1) to consume or have in his or her possession any open container of alcoholic liquor in the public streets, alleys, roads, highway or parking areas, or any other property owned by or under the control of the State or any governmental subdivision, except as provided in this Article; or
- (2) to consume or have in his or her possession any open container of alcoholic liquor in any place of public resort or any place open to the general public (including parking areas or lots) except as permitted by a license issued for the premises pursuant to the Nebraska Liquor Control Act,
- (3) to consume or have in his or her possession any open container of alcoholic liquor inside a motor vehicle unless the alcoholic liquor is located so that no occupant of the motor vehicle shall have access to it while the vehicle is in motion, or
- (4) to consume any alcoholic liquor other than beer upon a premise licensed for the sale of beer at retail only.

A container of alcoholic liquor shall be considered an "open container" if the seal of the original package is broken. A violation of this section shall be a Class I violation.

Sec. 22-86. - Alcoholic liquor; consumption; place open to general public; hours; restrictions.

It shall be unlawful for any person owning, operating, managing, or conducting any dance hall, restaurant, cafe, club, or place of public resort to permit or allow any person to consume alcoholic liquor upon the premises, except as permitted by a license previously issued to such premises pursuant to the Nebraska Liquor Control Act. A violation of this section shall be a Class I violation.

Sec. 22-87. - Urinating upon private property.

It shall be unlawful for any person to urinate upon any private parking lot within the city, where such act is within the public view. A violation of this section shall be a Class I violation.

Sec. 22-88. – Spitting, expectorating, prohibited

It shall be unlawful for any person within the City to intentionally, knowingly, or recklessly spit or expectorate upon any person within the City. A violation of this section shall be a Class I violation.

Sec. 22-89. – Public Indecency.

- (1) A person, eighteen years of age or older, commits public indecency if such person performs or procures, or assists another to perform, in a public place where the conduct may reasonably be expected to be viewed by members of the public:
- (a) An act of sexual penetration as that term is defined in the statutes of Nebraska; or
 - (b) Any exposure of the genitals of the body done with intent to affront or alarm any person; or
 - (c) A lewd fondling or caressing of the body of another person of the same or opposite sex.

A violation of this section shall be a Class I violation

Secs. 22-90—22-101. - Reserved.

ARTICLE V. - OFFENSES INVOLVING MORALS

DIVISION 1. - GENERALLY

Secs. 22-102—22-130. - Reserved.

DIVISION 2. - HARMFUL CHEMICAL SUBSTANCES

Sec. 22-131. - Inhaling; drinking; internal use; prohibited.

It shall be unlawful for any person to breathe, inhale, drink or in any manner use internally any compound, liquid, or chemical containing acetate, benzene, butyl alcohol, ethyl alcohol, ethylene dichloride, ethylene trichloride, isopropanol, isopropyl alcohol, methyl alcohol, pentachlorophenol, petroleum ether, trichloroathane, toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any compound, substance or liquid (including, but not limited to, glue, cement or nail polish adhesive), containing any of such chemicals, or any solvent having the property of releasing toxic vapors or fumes, for the purpose of inducing a condition of intoxication, inebriation, stupefaction, depression, giddiness, exhilaration, paralysis or irrational behavior or in any manner changing, distorting, or disturbing the auditory, visual or mental or nervous processes or in any way dulling the brain or nervous system. A violation of this section shall be a Class I violation.

Sec. 22-132. - Aiding; counseling; furnishing; restricted.

It shall be unlawful for any person to aid or counsel, or furnish to, another to use for any purpose prohibited by section 22-131 any chemical or any compound, substance, or liquid containing any chemical described in section 22-131. A violation of this section shall be a Class I violation.

Sec. 22-133. - Sale; restricted.

It shall be unlawful for any person to sell any chemical, or any compound, substance or liquid containing any chemical, described in section 22-131 for the purpose of use to breathe, inhale, drink or in any manner use internally. A violation of this section shall be a Class I violation.

Sec. 22-134. - Physicians and surgeons.

Anything in sections 22-131 through 22-133 to the contrary notwithstanding, the prohibitions and restrictions contained in such sections shall not apply to the use, the aiding or counseling in the use or the furnishing or sale for use, of chemicals, or of compounds, substances or liquids containing any of the chemicals described in section 22-131 whenever, in accordance with good medical practice, the use shall have been directed by and occurs in the presence of a physician or surgeon duly licensed to practice under the laws of the state, or the sale, furnishing or use occurs pursuant to and in accordance with a written prescription that shall have been issued in accordance with good medical practice and signed by a physician or surgeon duly licensed to practice under the laws of the state or any other state. A violation of this section shall be a Class I violation.

Sec. 22-135. – Controlled substance; equipment; possession.

It shall be unlawful for any person to possess an opium pipe or any device, contrivance, instrument, or paraphernalia designed for use or principally used for smoking a controlled substance. It also shall be unlawful for any person to possess a hypodermic needle or syringe, or any other device, contrivance, instrument, or paraphernalia designed for use or used for injecting a controlled substance, except:

- (1) licensed drug manufacturers, wholesale drug jobbers, pharmacists, physicians, dentists, podiatrists, veterinarians, and nurses.
- (2) hospital research, teaching, and clinical laboratories personnel, funeral directors and embalmers,
- (3) persons specifically authorized by a licensed physician, dentist, or podiatrist to use a hypodermic needle or syringe for medical treatment purposes, while so using the needle or syringe, and
- (4) persons using a hypodermic needle or syringe for the treatment of livestock.

A violation of this section shall be a Class I violation.

Secs. 22-136—22-151. - Reserved.**ARTICLE VI. - OFFENSES INVOLVING UNDERAGE PERSONS**

Sec. 22-152. - Possession of tobacco.

- (1) It shall be unlawful for any person under 21 years of age to possess tobacco.
- (2) It shall hereafter be unlawful for any person, firm, or corporation to sell cigars, tobacco, cigarettes, or cigarette materials within the City to any person under the age of twenty-one (21) years of age.
- (3) Tobacco is any substance or product containing tobacco leaf, including but not limited to, cigars, cigarettes, pipe tobacco, and all forms of smokeless tobacco as defined at Neb. Rev. Stat. § 69-1902(2).
- (4) This article shall not prohibit: persons who are under the age of twenty-one (21) years from handling tobacco in the course of their employment in grocery stores or retail establishments, if such person are of legal age to handle and distribute tobacco in the ordinary course of their employment.

A violation of this section shall be a Class I violation

Secs. 22-153—22-174. - Reserved.**ARTICLE VII. – FIREWORKS****Sec. 22-175. - Prohibited; nonapplicability.**

- (1) It shall be unlawful for any person to manufacture, display, sell, offer for sale, give away, use, start, discharge or explode, or cause to be manufactured, displayed, sold, offered for sale, given away, used, started, discharged, or exploded, any firework.
- (2) The provisions of the immediately preceding subsection shall not apply to:
 - (a) Non-wire sparklers, toy pistols or toy pistol caps;
 - (b) The possession of pyrotechnics which are in transportation to points outside the city;
 - (c) The possession or transportation of such pyrotechnics held by wholesale dealers for sale and shipment in unbroken packages to points or places outside the city;
 - (d) The sale, storage, or use of railroad track torpedoes or other signaling devices used by railroads;
 - (e) The sale, storage or use of flashlight compositions by photographers or dealers in photographic supplies;

- (f) Pyrotechnic displays on the occasion of public celebrations or festivals, if the person conducting such pyrotechnic display shall first have applied for and have been granted by resolution of the mayor and city council permission to conduct such display;
 - (g) The sale and use of fireworks between June 24 and July 4 each year, during time periods authorized by state statute as modified by resolution of the mayor and city council, or by another section of this article;
 - (h) The use of blank cartridge pistols at sporting events by authorized persons; or
 - (i) The use of blank cartridge pistols or other pyrotechnics by a person designated by the city manager or designee to implement the waterfowl management policy.
- (3) The terms “firework” or “fireworks”: in this article shall refer to “consumer fireworks” as they are defined by Neb. Rev. Stat. § 28-1241 as now constructed or hereafter amended.

Sec. 22-176. - Illegal discharge of fireworks.

It shall be unlawful to discharge any illegal fireworks as defined by state statute within the city.

Sec. 22-177. - Legal dates, times and age restrictions for discharging fireworks; permit required.

- (1) It shall be unlawful to discharge any firework as defined and permitted by state statute, prior to June 25, and after July 4 and at any time other than the dates and times specifically authorized by state statute and as modified by resolution of the mayor and city council.
- (2) Fireworks may be legally discharged between the hours of 9:00 a.m. and 10:00 p.m. on June 25 to July 2; and between the hours of 9:00 a.m. and 12:00 midnight on July 3 and July 4. The city manager or his or her designee may authorize in writing the discharge of fireworks between 9:00 a.m. and 12:00 midnight on July 5 if, in the discretion of the city manager or his or her designee, sufficient circumstances warrant an extension of the holiday celebration, provided that no firework may be discharged on July 5 without the written authorization of the city manager or his or her designee.
- (3) The use or possession of fireworks by any person under 12 years of age is prohibited unless direct supervision is provided by a person 18 years of age or older.
- (4) The city manager or designee shall issue a permit allowing the sale of fireworks during permitted periods for that calendar year under the following standards:
 - (a) Proof of fireworks license from the state fire marshal under state administrative code title 157, chapters 2 and 4, permissible fireworks list and licensing requirements, as per the current International Fire Code, fireworks as adopted by the city;

(b) Sale and retail display with storage in type 5 magazine 3301.1.3, 3301.2.3, 3302 and 3308.11.

(5) At no time shall it be lawful to discharge a firework in any manner that is unsafe or dangerous to persons or property in any manner prohibited by Neb. Rev. Stat. § 28-1242 as now constructed or hereafter amended.

(6) At no time shall it be lawful to discharge a firework into or upon any city recreational property unless the city has granted a special permit for such discharge.

Sec. 22-178. - Discharge or release of sky lantern or fire balloons.

(1) Nothing in this article shall allow the discharge or release, at any time, of a sky lantern, fire balloon, or other device constructed of collapsible paper and designed to rise slowly into the sky by the use of a slow-burning interior flame, similar to the design of a hot-air balloon.

(2) Sky lantern or fire balloon shall also refer to any device with a flame that continuously burns for over one minute and is designed to reach an elevation of at least 50 feet from the ground.”

SECTION 3. All other Ordinances or parts of Ordinances in conflict with this Ordinance are repealed as of the effective date of this Ordinance.

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

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones and McGhehey.

Voting Nay: None.

Motion carried.

- Next on the agenda for Council was the second reading of Ordinance No.2937 which will amend the Code by removing the A-2 Downtown Improvement District Board.

A motion was made by Councilman Mischnick, seconded by Councilman McGhehey to approve the second reading of Ordinance No. 2937. City Clerk Johnson read the ordinance by title which follows in its entirety:

ORDINANCE NO. 2937

AN ORDINANCE OF THE CITY OF ALLIANCE, NEBRASKA, DISSOLVING THE A-1 BUSINESS IMPROVEMENT DISTRICT, REPEALING §§ 18-31 TO 18-35 AND § 18-41 OF THE ALLIANCE MUNICIPAL CODE, REVERTING ASSETS OF THE A-1 BUSINESS

IMPROVEMENT DISTRICT TO THE CITY OF ALLIANCE, NEBRASKA FOR USE GENERALLY BY THE PARKS AND RECREATION DEPARTMENT, REPEALING ALL OTHER ORDINANCES INCONSISTENT HEREWITH, AND PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1. The City Council of the City of Alliance, Nebraska (the "City") adopted and approved Resolution No. 22-20 on April 5, 2022, stating its intent to dissolve the A-1 Business Improvement District. A public hearing was held on May 3, 2022 for all interested persons to state their position on the dissolution of the A-1 Business Improvement District, and following the hearing the City hereby dissolves the A-1 Business Improvement District, pursuant to Neb. Rev. Stat. § 19-4035.

SECTION 2. All assets held by the A-1 Business Improvement District or managed by the A-1 Business Improvement District board shall revert to the City, for use generally by the Parks and Recreation Department of the City, pursuant to Neb. Rev. Stat. § 19-4036.

SECTION 3. Sections 18-31 to 18-35 and section 18-41 of the Alliance Municipal Code are hereby repealed and reserved for future use. All other ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

SECTION 4. This Ordinance shall take effect and be in force following its passage, approval, publication as required by law.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, and McGhehey.

Voting Nay: Jones.

Motion carried.

- The second reading of Ordinance No. 2938 which will dissolve the A-2 Downtown Business Improvement District was next on the agenda.

A motion was made by Councilman Mischnick, seconded by Mayor Dafney to approve the second reading of Ordinance No. 2938. City Clerk Johnson read the ordinance by title which follows in its entirety:

ORDINANCE NO. 2938

AN ORDINANCE OF THE CITY OF ALLIANCE, NEBRASKA, DISSOLVING THE A-2 BUSINESS IMPROVEMENT DISTRICT, REPEALING §§ 18-31 TO 18-35 AND § 18-41 OF THE ALLIANCE MUNICIPAL CODE, REVERTING ASSETS OF THE A-2 BUSINESS

IMPROVEMENT DISTRICT TO THE CITY OF ALLIANCE, NEBRASKA FOR USE GENERALLY BY THE PARKS AND RECREATION DEPARTMENT, REPEALING ALL OTHER ORDINANCES INCONSISTENT HERewith, AND PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1. The City Council of the City of Alliance, Nebraska (the "City") adopted and approved Resolution No. 22-20 on April 5, 2022, stating its intent to dissolve the A-2 Business Improvement District. A public hearing was held on May 3, 2022 for all interested persons to state their position on the dissolution of the A-2 Business Improvement District, and following the hearing the City hereby dissolves the A-2 Business Improvement District, pursuant to Neb. Rev. Stat. § 19-4035.

SECTION 2. All assets held by the A-2 Business Improvement District or managed by the A-2 Business Improvement District board shall revert to the City, for use generally by the Parks and Recreation Department of the City, pursuant to Neb. Rev. Stat. § 19-4036.

SECTION 3. Sections 18-31 to 18-35 and section 18-41 of the Alliance Municipal Code are hereby repealed and reserved for future use. All other ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

SECTION 4. This Ordinance shall take effect and be in force following its passage, approval, publication as required by law.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, and McGhehey.

Voting Nay: Jones.

Motion carried.

- Ordinance No. 2939 was next before Council on second reading and will approve the addition to the Code, Section 111-443, titled Setback Exceptions, to include and address a setback exception for reverse corner lots. The following information was provided:

[The City received an inquiry into a setback variance for a house constructed on a lot that faces a side street. Houses on these lots, particularly in the older parts of town south of 12th Street, were constructed with a 5' setback from the side street. Currently a setback of 15' is required for the side street setback or 25' if they choose to front the house along the side street.

One of the requirements for the Board of Adjustment to issue a Variance is that the condition causing the issue not be of a reoccurring nature. If the condition

exists in multiple locations, the Law is intended for the Planning Commission and City Council to consider amending the code to accommodate it. There are approximately 82 reverse corner lots in Alliance south of 12th Street with varying setbacks from the side street.

The first proposed code amendment is to Section 101-73 adding the definition of a “Reverse Corner Lot” so that it is clearly described in our code. In summary, reverse corner lots are lots that are addressed facing the side street.

The second code amendment is to Section 111-443 and it restores a section of code that allowed for modification to existing houses and structures on reverse corner lots that were developed with the 5’ side street setback. Staff believes this exception was overlooked and removed from the Municipal Code during the 1986 rewrite. It will allow greater lot coverage and a 5’ setback from the side street for existing houses.

The Planning Commission met at their regular meeting on April 12, 2022 and voted to recommend the amendment of Alliance Municipal Code Section 101-73, titled “L”, adding the definition of a “Reverse Corner Lot” and Section 111-443 titled “Setback Exceptions” adding provisions for existing reverse corner lots.]

A motion was made by Councilman McGhehey, seconded by Councilman Mischnick to approve the second reading of Ordinance No. 2939. City Clerk Johnson read the ordinance by title which follows in its entirety:

ORDINANCE NO. 2939

AN ORDINANCE AMENDING SECTION 111-443 OF THE ALLIANCE MUNICIPAL CODE TO INCLUDE AND ADDRESS A SETBACK EXCEPTION FOR REVERSE CORNER LOTS; AMENDING SECTION 101-73. – L TO INCLUDE A DEFINITION OF REVERSE CORNER LOTS; REPEALING EXISTING ORDINANCES, RESOLUTIONS, POLICIES, OR PORTIONS THEREOF NOT CONSISTENT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1. The City Code, at Section 111-443. – Setback exceptions is hereby amended as follows:

“Sec. 111-443. - Setback exceptions.

- (a) *Porches*. Porches on one- and two-family dwellings may extend six feet into the required front or rear setback only if existing houses constructed on the same side of the street were constructed in a like manner; however, porches may not be extended into the front or rear setback on dwellings where the original porch

was enclosed or converted into a room unless said enclosed porch or room meets the minimum setback requirements for one- and two-family dwellings; any porch extending into the required setback shall not be turned into a room.

- (b) *Residential front building line.* In subdivisions without front building lines dedicated on the plat, and where 40 percent or more of the frontage on the same block and same side of the street has been developed, excluding reverse corner lots, the front building line for all remaining undeveloped lots shall be determined by taking the average setback found on developed lots, excluding those that vary more than ten feet in depth; provided that the board of adjustment may permit a variance in case of hardship, or where the configuration of the ground is such as to make conformity with the front yard requirements impractical. The building line shall be 25 feet for lots described above where less than 40 percent of the lots have been developed.
- (c) *Open and unobstructed.* Every part of each required minimum yard or court established by setbacks and building lines shall be open and unobstructed from finished grade or, where applicable from such other specified level at which the yard or court is required, to the sky except as otherwise provided for in Code.
- (d) *Architectural intrusion.* Every part of required yard or court shall be open from its lowest point to the sky unobstructed, except for the ordinary projection of sills, belt courses, cornices, chimneys, buttresses, ornamental features, and eaves; provided, however, that none of the projections shall extend into a court more than six inches nor into a minimum yard more than 24 inches. Open and unroofed balconies on other than the main floor of residential buildings may extend into a required side yard.
- (e) *Duplex, row, and townhouses.* In districts R-2, R-3, and their counterpart planned districts, two, single-family dwellings may be constructed on adjoining lots or single lots planned for future separate ownership, provided that the structures shall be constructed with an occupancy separation wall meeting structural requirements of the city building code, further provided, that this exception shall not reduce the required one-family dwelling minimum lot width of either lot. The minimum lot width requirement of this section shall not apply to lots of record which are 50 feet in width or wider and were under single ownership prior to April 1, 2019.
- (f) *Corner and reverse corner lots.* On reverse corner lots that were subdivided before the adoption of subdivision regulations and do not meet minimum lot size requirements, the minimum setbacks shall be 5 feet from the side street, alley, and rear property lines; and the maximum lot coverage shall be 60%. Reverse corner lots shall provide a side yard adjacent to the street side no less than is required for the front yard of the lots facing the non-side street, including any accessory structures. Any addition to a structure on a corner lot legally developed with a side street setback less than is currently permitted by code may continue along that same side street building line provided such building line is a minimum of 5 feet from the side street property line and is not located within the front or rear yard setbacks.”

SECTION 2. The City Code, at Section 111-73. - L is hereby amended as follows:

“Sec. 101-73. - L.

Landing means an area at the top or bottom of a one or more steps, or placed intermittently within a series of steps in such size and dimension as may be required by the adopted building code.

Landscaping includes but is not limited to, trees, shrubs, ground covers, perennials, annuals, and other materials such as mulch, rocks, waterfalls, sculpture, art walls, fences, underground irrigation system, and street furniture.

Loading space, off-street means space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used at such delivery site, and accessible to such vehicles even when required off-street parking spaces are filled. Off-street loading space is not to be included as off-street parking space in computation of required off-street parking space.

Lot means a parcel of land occupied or to be occupied by one principal building, or unit group of buildings constructed for the principal or conditional use of the lot, and the accessory buildings or accessory uses customarily incident thereto, including such open spaces as are required by Code, and having its principal frontage upon a public street or approved place. A lot as used herein may consist of one or more platted lots if combined, or tract or tracts, as conveyed, or parts thereof.

Lot; corner means a lot abutting upon two or more streets, at their intersection. A corner lot shall be deemed to front on that street on which it has its least dimension, unless otherwise specified by the city manager or designee.

Lot coverage means the portion of a lot that is occupied by buildings or structures, including accessory buildings and structures but not including driveways and uncovered patios at ground level.

Lot depth means the mean horizontal distance from the front property line to the rear property line.

Lot in separate ownership, at the time of the passage of the ordinance from which this chapter is derived, means a lot the boundary lines of which along their entire length touch lands under other ownership as shown by plat or deed recorded in the Office of the Register of Deeds of Box Butte County on or before the date of the adoption of the ordinance from which this chapter is derived.

Lot line means the lines bounding a lot.

Lot line; front means the boundary between a lot and the street on which it fronts.

Lot; interior means a lot whose side lot lines do not abut upon any street.

Lot line; rear means the lot line which is opposite and most distance from the front lot line; except that in the case of uncertainty the city manager or designee shall determine the rear lot line.

Lot line; side means any lot boundary line that is not a front lot line or rear lot line thereof. A side lot line may be party line, a line bordering on an alley, or a side street line.

Lot; reverse corner means a corner lot whose frontage faces the street perpendicular to the street on which other lots of the same block have frontage, typically in accordance with setbacks as if the frontage of the reverse corner lot faced the street on which other lots of the same block have a frontage.

Lot subdivision means the division or combination of one or more previously platted lots on the same side of a street and in the same block into lots of different size or width than previously platted. Such procedure may produce more or fewer lots than previously platted; provided, however, no lot so produced shall have a width or area less than that permitted in the zoning regulations of the city, nor shall it change any street or alley line, or any platted building line.

Lot; through means an interior lot having frontage on two streets.

Lot width means the horizontal distance between side lot lines, measured at the front lot-line setback.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of chapter 113.”

SECTION 3. All other Ordinances or parts of Ordinances in conflict with this Ordinance are repealed as of the effective date of this Ordinance.

SECTION 4. 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 McGhehey to suspend the statutory rule requiring three separate readings of Ordinance No. 2939.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, and McGhehey.

Voting Nay: None.

Motion carried.

Roll call vote to approve Ordinance No. 2939 on final reading with the following results:

Voting Aye: Dafney, Mischnick, Jones, and McGhehey.

Voting Nay: None.

Motion carried.

Mayor Dafney stated, “the passage and adoption of Ordinance No. 2939 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published.”

- Council next considered Ordinance No. 2940 which approves the addition of “Farmers Market” as a definition in the Alliance Municipal Code and will clarify what that land use entails. The following information was provided:

[On March 15, 2022, the Alliance City Council Added “Farmers Market” as a Conditional Use in the Ag, Agriculture Zoning District as part of an amendment to that particular section of Code.

The addition of “Farmers Market” as a definition in the Alliance Municipal Code will clarify what that land use entails and prevent more intensive land uses being passed off as a “Farmers Market.”

The Planning Commission met at their regular meeting on April 12, 2022 and voted to recommend the amendment to Alliance Municipal Code Section 101-67, titled “F”, adding the definition of a “Farmers Market.”]

A motion was made by Councilman McGhehey, seconded by Councilman Mischnick to approve the second reading of Ordinance No. 2940. City Clerk Johnson read the ordinance by title which follows in its entirety:

ORDINANCE NO. 2940

AN ORDINANCE AMENDING SECTION 101-67. – F TO INCLUDE A DEFINITION OF FARMERS MARKET; REPEALING EXISTING ORDINANCES, RESOLUTIONS, POLICIES, OR PORTIONS THEREOF NOT CONSISTENT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1. The City Code, at Section 101-67. – F is hereby amended as follows:

“Sec. 101-67. - F.

Facility means a structure, building, open area, or other physical contrivance or object.

Family applied to the following districts:

- (1) Any R-1 zoned area: One or more persons related by blood, adoption, or marriage, except persons placed with persons in a home licensed by the state department of health and human services, living together and occupying a single housekeeping unit with single kitchen facilities, or a number of persons but not exceeding two who are not related by blood, adoption or marriage, except persons placed with persons in a home licensed by the state department of health and human services, living together by joint agreement and occupying a single housekeeping unit with single kitchen facilities.
- (2) All zoned areas except R-1, means as follows: One or more persons who are related by blood, adoption, or marriage, except persons placed with persons in a home licensed by the state department of health and human services, living together and occupying a single housekeeping unit with single kitchen facilities, or a group of not more than five living together by joint agreement and occupying a single housekeeping unit with single kitchen facilities, on a nonprofit cost-sharing basis.

Farm/ranch means an area of land containing at least ten contiguous acres which is used for agriculture.

Farmers market means a place where local farmers sell at retail fruit, vegetables, meat, cheese, and other animal products, as well as bakery products, jelly's, jams, etc., primarily produced by the local farmers, directly to consumers.

Feed lot means a lot, yard, corral, building or other area in which livestock are confined, primarily for the purposes of feeding and growth prior to slaughter or the sale of products derived from such animals; not including areas which are used for the raising of crops or other vegetation, and upon which livestock are allowed to graze.

Fence means any vertical structure, other than a building or plant material which is for the purpose of obstructing visual observation, or for the purpose of

obstructing pedestrian, automotive, or animal movement, or for the purpose of beautification, and which is attached to the ground or to a building, but excluding retaining walls.

Fence; closed means fences constructed in any manner other than an open fence.

Fence; open means split rail or one by four inch board with a maximum of three horizontal rails or boards with no vertical boards except supporting posts, or open metal fencing. Privacy slats or any other fencing equipment that may hinder vision shall be considered a closed fence.

Fence vision triangle means the triangle on a corner lot at the intersection of two streets or avenues. It is created by measuring 25 feet from the intersection along each property line and drawing the hypotenuse between these two points.

Filling station means a facility that sells automobile fuel including, but not limited to, gasoline, diesel, propane, and compressed natural gas. It shall also include charging stations and may be accompanied by convenience food stores.

Flood means a temporary rise in stream's flow or stage that results in water overflowing its banks and inundating areas adjacent to the channel or an unusual and rapid accumulation of run-off or surface waters from any source.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures, including utility and sanitary facilities, which would preclude the entry of water. Structural components shall have the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.

Floor area means the total of the horizontal area of all floors including basements and cellars, below the roof and within the surfaces of the main walls of principal buildings or accessory buildings or the centerlines of party walls separating such buildings or portions thereof, or within lines drawn parallel to and two feet within the roofline of any building or portion thereof without walls.

Frontage means that side of a lot abutting on a street and ordinarily regarded as the front of the lot, but it shall not be considered as the ordinary side of a corner lot.

Frontage street means any street which is parallel to and adjacent to major streets or highways and provides access to the abutting properties and protection from through traffic.”

SECTION 2. All other Ordinances or parts of Ordinances in conflict with this Ordinance are repealed as of the effective date of this Ordinance.

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 Mischnick to suspend the statutory rule requiring three separate readings of Ordinance No. 2940.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, and McGhehey.

Voting Nay: None.

Motion carried.

Roll call vote to approve Ordinance No. 2940 on final reading with the following results:

Voting Aye: Dafney, Mischnick, Jones, and McGhehey.

Voting Nay: None.

Motion carried.

Mayor Dafney stated, "the passage and adoption of Ordinance No. 2940 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published."

- Next on the agenda for Council was the second reading of Ordinance No. 2941 which will amend the current Classification Plan set for FY 2021-2022. The following information was provided:

[Upon approval, the attached ordinance will modify the current Classification Plan.

The following changes are based on an annual review of City of Alliance salaries utilizing the Nebraska Pay Survey from 2021 and completed in conjunction with the Nebraska League of Municipalities. <http://nebraskapaysurveys.com/>. The City utilizes the standard of pay based on comparability's as required by law. All expect the changes in the Electric Department ensure compliance. While the survey data is propriety information and cannot be shared publicly, the City Manager has reviewed the source information and supports the following changes. Changes are being recommended now (rather than during the budget process) because wage comparison is based on current pay comparability's. It will also allow a two-step pay adjustment with less impact of the budget by making these changes now and any cost of living adjustments paid in the next fiscal year.

The Classification Plan has the following changes from the most recent version approved by Council:

Police Chief	108 to 109
Fire Chief	108 to 109
Finance Director	107 to 109
CLS Director	105 to 106
HR Director	103 to 106
Animal Control/Comm. Service Officer	213 to 215
Public Transit Driver	207 to 209

Electric Department – wage changes reflect a blended comparison of municipally operated electric departments as well as rural electric associations (REA).

Electric Superintendent	108 to 110
Electric Line Foreman	227 to 229
Electric Journey Line Worker	225 to 227
Electric Apprentice	Level 1 - 216/2 to 220/1
	Level 2 - 216/4 to 220/5
	Level 3 - 218/4 to 223/6
	Level 4 - 218/7 to 223/9

Potential Budget Impact – With an effective date of May 14, 2022, wages in the Electric Department would cost approximately \$11,500 with all other changes costing approximately \$8,400.]

A motion was made by Councilman Jones, seconded by Councilman Mischnick to approve the second reading of Ordinance No. 2941. City Clerk Johnson read the ordinance by title which follows in its entirety:

ORDINANCE NO. 2941

AN ORDINANCE ADOPTING A REVISED CLASSIFICATION PLAN FOR THE CITY OF ALLIANCE, NEBRASKA.

WHEREAS, Section 16-310 of R.R.S. 1943 authorizes the Mayor and Council to establish the compensation for employees and officers by stating that "The officers and employees in cities of the first class shall receive such compensation as the mayor and council shall fix by ordinance;" and,

WHEREAS, The Alliance City Council adopted the Fiscal Year 2021-2022 Budget which included funds for a revised Classification Plan.

WHEREAS, The City Manager is requesting that certain positions be modified to the Classification Plan of the City of Alliance.

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

SECTION 1. That the Classification Schedule for the City of Alliance dated effective October 5, 2021 is hereby amended.

SECTION 2. 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 Mayor Dafney, seconded by Councilman Mischnick to suspend the statutory rule requiring three separate readings of Ordinance No. 2941.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, and McGhehey.

Voting Nay: None.

Motion carried.

Roll call vote to approve Ordinance No. 2941 on final reading with the following results:

Voting Aye: Dafney, Mischnick, Jones, and McGhehey.

Voting Nay: None.

Motion carried.

Mayor Dafney stated, "the passage and adoption of Ordinance No. 2941 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published."

- Resolution No. 22-27 amending City Clerk Johnson's Employment Contract was next on the agenda for council.

A motion was made by Councilman Jones, seconded by Councilman Mischnick to approve Resolution No. 22-27 which follows in its entirety:

RESOLUTION NO. 22-27

WHEREAS, The City Council of Alliance, Nebraska, hired Tarrah S. Johnson as City Clerk on March 21, 2020; and

WHEREAS, City Council offered a written employment agreement for City Clerk Johnson's future employment which was prepared by the City's legal counsel; and

WHEREAS, City Council desires to amend the employment agreement with Clerk Johnson; and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of Alliance, Nebraska, that the amended contract terms of employment with Clerk Johnson, which accompanies this Resolution is approved by City Council and the Mayor is authorized to execute the contract on behalf of the City of Alliance.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, and McGhehey.

Voting Nay: None.

Motion carried.

- Next on the agenda for Council was Resolution No. 22-28 which awards the bid for the Alliance Library hail damage repairs to Twin City Roofing & Sheet Metal, Inc. in the amount of \$288,496.40. The following information was provided:

[The Library Learning Center roof sustained significant damage during the storm event in July of 2021. In compliance with insurance requirement, the City of Alliance requested sealed bids for the complete replacement of the Library Learning Center roof and skylight. Two bids were received and opened at 2:00 p.m. on April 29, 2022 at City Hall. Below is a bid tab detailing the engineer's estimate and the bids that were received:

<u>Bids Received/Engineer Estimate</u>	<u>Bid Amount</u>
Twin City Roofing & Sheet Metal, Inc.	\$288,496.40
Weathercraft Roofing	\$301,321.03
Engineer's Estimate	\$285,585.86

Staff agrees with the engineer's recommendation to award the project to Twin City Roofing & Sheet Metal, Inc. in the amount of \$288,496.40. The City has filed an insurance claim on this project which was based on the engineer's estimate. Traveler's has agreed to adjust the claim amount to match the bid award.]

A motion was made by Councilman Jones, seconded by Councilman Mischnick to approve Resolution No. 22-28 which follows in its entirety:

RESOLUTION NO. 22-28

WHEREAS, The City of Alliance owns and operates the Alliance Public Library/Learning Center; and

WHEREAS, The City experienced significant storm damages on July 9, 2021; and

WHEREAS, An Invitation to Bid for the Alliance Library Hail Damage Repair was published and bids were opened; and

WHEREAS, The City received two bids with Twin City Roofing & Sheet Metal, Inc. of Scottsbluff, NE in the amount of Two Hundred Eighty-eight Thousand Four Hundred Ninety-six and 40/100ths (\$288,496.40); and

WHEREAS, The Engineer completed an Independent Cost Analysis and found the bid to be fair and reasonable.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Alliance, Nebraska, that the Mayor is authorized to sign the contract and documents associated with the Alliance Library Hail Damage Repair for the Alliance Municipal Airport from Twin City Roofing & Sheet Metal, Inc. of Scottsbluff, NE in the amount of Two Hundred Eighty-eight Thousand Four Hundred Ninety-six and 40/100ths (\$288,496.40).

BE IT FURTHER RESOLVED the bid was reviewed by the City's insurance carrier and is approved for full payment.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, and McGhehey.

Voting Nay: None.

Motion carried.

- Next for Council's consideration was Resolution No. 22-29 stating the intent of the City to fund an upcoming airport project utilizing revenue bond issue and allows the reimbursement of City payments with bond proceeds. The following information was provided:

[The City of Alliance has included budget authority for \$4.95 million in taxiway and apron rehabilitation projects for fiscal year 2021-22. This planned project will be funded 90% by Federal grants; however, will result in a City match of almost \$500,000 and exceed the amount of airport reserve funds as well as current cash flows. The bid has been awarded for the project which should occur in the last half of calendar year 2022 with two engineer payments already issued.

In order to preserve the tax-exempt status of bond issues, IRS regulations require that the City adopt a resolution stating the intent to borrow. This resolution must be passed prior to the beginning of project(s) (or shortly thereafter) in order to allow the City to be reimbursed for project payments from bond proceeds. The resolution

before Council indicates the intent of the City to fund the upcoming airport project utilizing revenue bond issue(s) and allows the reimbursement of City payments with bond proceeds.]

A motion was made by Councilman Mischnick, seconded by Councilman McGhehey to approve Resolution No. 22-29 which follows in its entirety:

RESOLUTION NO. 22-29

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF ALLIANCE, NEBRASKA TO DECLARE ITS OFFICIAL INTENT UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, TO REIMBURSE CERTAIN CAPITAL EXPENDITURES FROM THE PROCEEDS OF TAX-EXEMPT OR TAX-FAVORED DEBT OBLIGATIONS

WHEREAS, the United States Department of the Treasury has promulgated final regulations under the Internal Revenue Code of 1986, as amended (the "Code"), that impose requirements on the City of Alliance, Nebraska (the "Issuer") when it desires to reimburse itself for capital expenditures relating to the capital projects described herein from the proceeds of its tax-exempt or tax-favored debt obligations or such debt obligations issued on its behalf; and

WHEREAS, the Issuer has determined that it is necessary to upgrade and improve the airport runway system within the Issuer (collectively, the "Project") and to finance the costs of such Project with the proceeds of tax-exempt or tax-favored debt obligations to be issued by the Issuer or by an entity authorized to issue such obligations; and

WHEREAS, the Issuer anticipates that the Issuer will spend its moneys to pay Project costs (the "Prior Capital Expenditures") prior to the issuance of any tax-exempt or tax-favored debt obligations; and

WHEREAS, the Issuer reasonably expects to be reimbursed for such Prior Capital Expenditures with proceeds of tax-exempt or tax-favored debt obligations to be issued by the Issuer or by an entity authorized to issue such obligations (the "Reimbursement Debt") in the maximum principal amount of \$500,000 plus such additional principal amount necessary to pay costs of issuance and to fund any reserves; and

WHEREAS, the Issuer expects that the Reimbursement Debt will be incurred and allocated to reimburse the Prior Capital Expenditures no later than 18 months after the later of (a) the date on which it pays the Prior Capital Expenditures, or (b) the date on which the Project is placed in service, but in no event not later than 3 years after the original date of such Prior Capital Expenditures, or (c) such other date that is permitted by law; and

WHEREAS, the Issuer finds it necessary to adopt this resolution to ensure that its declaration of intent to reimburse itself for such Prior Capital Expenditures satisfies the "Official Intent Requirement" described in Treasury Regulations Section 1.150-2 (the "Regulations").

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ALLIANCE, NEBRASKA, AS FOLLOWS:

Section 1. The Issuer hereby declares its official intent to reimburse itself for the Prior Capital Expenditures relating to the Project out of the proceeds of the Reimbursement Debt to be issued by the Issuer or by an entity authorized to issue such obligations on its behalf. With such declaration, the Issuer hereby satisfies the “Official Intent Requirement” of the Regulations.

Section 2. Other than (a) expenditures to be paid or reimbursed from sources other than the Reimbursement Debt, (b) expenditures constituting “preliminary expenditures” within the meaning of Section 1.150-2(f)(2) of the Regulations or (c) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Project have been paid by the Issuer more than 60 days prior to the date of execution and delivery of this Resolution.

Section 3. This resolution does not constitute approval of any kind with respect to the issuance of the Reimbursement Debt or any other tax-exempt or tax-favored debt obligations and does not legally or morally obligate the Issuer or any other entity to issue such obligations on its behalf.

Section 4. This resolution shall be operative, effective and valid upon its passage by the City Council.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, and McGhehey.

Voting Nay: None.

Motion carried.

- The last item on the agenda was Board Appointments.

A motion was made by Councilman Mischnick, seconded by Councilman McGhehey to appoint Florence Nickens to serve on the Knight Museum & Sandhills Center Board for a term expiring May 31, 2026.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, and McGhehey.

Voting Nay: None.

Motion carried.

A motion was made by Councilman Mischnick, seconded by Councilman McGhehey to appoint Donna Frisch to serve on the Library Board for a term expiring June 30, 2026.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, and McGhehey.

Voting Nay: None.

Motion carried.

There being no further business before Council, Mayor Dafney adjourned the meeting at 7:22 p.m.



Mike Dafney, Mayor

(SEAL)



Tarrah S. Johnson, City Clerk

Complete minutes of the Alliance City Council may be viewed by the public during regular work hours at the City Clerk's Office, 324 Laramie Avenue, Alliance, Nebraska.

May 17, 2022