



NIBLEY CITY COUNCIL MEETING AGENDA

Thursday, July 27, 2023 – 6:30 p.m.

In accordance with Utah Code Annotated 52-4-207 and Nibley City Resolution 12-04, this meeting may be conducted electronically. The anchor location for the meeting will be Nibley City Hall, 455 West 3200 South, Nibley, Utah. The public may also participate in the meeting via the Zoom meeting link provided at www.nibleycity.com. Public comment should be submitted to cheryl@nibleycity.com by 6:30 p.m. and will be read into the public record.

1. Opening Ceremonies (Mayor Jacobsen)
2. Call to Order and Roll Call (Chair)
3. Approval of the July 13, 2023, City Council Meeting Minutes and the Current Agenda (Chair)
4. Planning Commission Report
5. Public Comment Period¹ (Chair)
6. **Presentation:** Diaper Need Awareness Week Proclamation
7. **Discussion & Consideration:** Resolution 23-13 - Morgan Farm Overall Vision and Scope (First Reading)
8. **Discussion & Consideration:** A Franchise Agreement with All West/Utah, Inc.
9. **Presentation:** Review of the Walkability Virtual Academy
10. **Public Hearing:** Ordinance 23-30- Rezone Parcel 03-043-0012, Located at 4017 South Hollow Rd from R-1 (Residential) to C (Commercial)
11. **Discussion and Consideration:** Ordinance 23-30- Rezone Parcel 03-043-0012, Located at 4017 South Hollow Rd from R-1 (Residential) to C (Commercial) (First Reading)
12. **Public Hearing:** Ordinance 23-31- Annexation Agreement with Watermark, LLC, Setting Forth Zoning and Development Obligations for Parcels 03-007-0010, 03-007-0011, and 03-007-0023, Located at Approximately 1250 W 2200 S, Assigning a Zone of R-M Mixed Residential with Modifications, In Advance of a Future Annexation Application
13. **Discussion and Consideration:** Ordinance 23-31- Annexation Agreement with Watermark, LLC, Setting Forth Zoning and Development Obligations for Parcels 03-007-0010, 03-007-0011, and 03-007-0023, Located at Approximately 1250 W 2200 S, Assigning a Zone of R-M Mixed Residential with Modifications, In Advance of a Future Annexation Application (First Reading)
14. **Discussion and Consideration:** Ordinance 23-28: Amending NCC 19.24.170 Landscaping: Instituting Water Wise Landscaping Requirements (First Reading)
15. **Discussion & Consideration:** Ordinance 23-27 – Amending NCC 19.20.010 Land Use Chart and 19.04.010 Definitions and adopting NCC 19.20.030 Mixed Use and NCC 19.24.270 Mobile Businesses and Food Trucks (Second Reading)
16. Council and Staff Report

Adjourn

¹ Public input is welcomed at all City Council Meetings. 15 minutes have been allotted to receive verbal public comment. Verbal comments shall be limited to 3 minutes per person. A sign-up sheet is available at the entrance to the Council Chambers starting 15 minutes prior to each council meeting and at the rostrum for the duration of the public comment period. Commenters shall identify themselves by name and address on the comment form and verbally for inclusion in the record. Comment will be taken in the order shown on the sign-up sheet. Written comment will also be accepted and entered into the record for the meeting if received prior to the conclusion of the meeting. Comments determined by the presiding officer to be in violation of Council meeting rules shall be ruled out of order.

In compliance with the Americans With Disabilities Act, reasonable accommodations for individuals with disabilities will be provided upon request. For assistance, please call (435) 752-0431

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Agenda Item #6

Description	Presentation: Diaper Need Awareness Week Proclamation
Presenter	Ted Chalfant, Co-Founder of Little Lambs
Staff & Planning Commission Recommendation	Listen to the presentation. Ask questions and offer feedback.
Reviewed By	Mayor

Background:

Little Lambs Foundation for Kids is a member of the National Diaper Bank Network, which has been actively raising awareness and addressing diaper needs across the country. This proclamation of September 18 to 24 of Diaper Need Awareness Week will be used in conjunction with other states and local governments to inform our community that there are families who cannot afford diapers for their children, and that diaper banks across the country are helping families obtain the diapers that they need.

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NATIONAL DIAPER NEED AWARENESS WEEK PROCLAMATION

Whereas, diaper need, the condition of not being able to afford a sufficient supply of clean diapers to keep babies and toddlers clean, dry, and healthy, can adversely affect the health and well-being of children and their families; and

Whereas, national surveys and research studies report that nearly one in two families struggles with diaper need, and 48 percent of families delay changing a diaper to extend the available supply; and

Whereas, a daily or weekly supply of diapers is generally an eligibility requirement for babies and toddlers to participate in child care programs and quality early-education programs that enable children to thrive and parents to work; and

Whereas, many parents struggling with diaper need report missing an average of five days of work each month due to an insufficient supply of diapers; and

Whereas, without enough diapers, babies and toddlers risk infections and health problems that may require medical attention resulting in medical costs, and parents may be prevented from accessing child care needed to go to work or school, thereby destabilizing the family's economic prospects and well-being; and

Whereas, the people of Nibley recognize that diaper need is a public health issue, and addressing diaper need can lead to economic opportunity for the state's families and communities and improved health for children, thus ensuring all children and families have access to the basic necessities required to thrive and reach their full potential; and

Whereas, Nibley is proud to be home to trusted community-based organizations including Little Lambs Foundation for Kids, that recognize the importance of diapers in ensuring health and providing economic stability for families and thus distribute diapers to families through various channels; and

Whereas, through their important work of addressing diaper need, diaper banks play a critical role in supporting families, improving infant health and wellbeing, and advancing our local and state economic growth; now

Therefore, I, Mayor Larry Jacobsen, do hereby proclaim the week of September 18th through September 24th, 2023 as *National Diaper Need Awareness Week*

In the City of Nibley, thank the aforementioned diaper banks, their staff, volunteers and donors, for their courageous service during the crisis, and encourage the citizens of Nibley to donate generously to diaper banks, diaper drives, and support those organizations that collect and distribute diapers to families struggling with diaper need, so that all of Nibley children and families can thrive and reach their full potential.

Larry Jacobsen, Mayor

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Agenda Item #7

Description	Discussion and Consideration: Resolution 23-13 - Morgan Farm Overall Vision and Scope (First Reading)
Presenter	Justin Maughan, City Manager, Roxie and Mike Christensen, Morgan Farm Managers
Staff Recommendation	Move to approve Resolution 23-13 - Morgan Farm Overall Vision and Scope. Consider waiving a second reading.
Reviewed By	Mayor Larry Jacobsen and Justin Maughan

Background:

For many years, the Morgan Farm has been managed under contract by the Richard Eversoll family. With appreciation for all that family has done and the legacy that they leave, Staff is looking forward to a new vision for the farm. Mayor Jacobsen and City Manager Justin Maughan have appointed Roxie and Mike Christensen as farm managers, who will be present at the Council meeting. The Council is encouraged to discuss and consider the proposed vision and scope. Once adopted, Roxie and Mike will manage the farm to implement the vision and scope.

Overall Vision and Scope:

Re-envisioning The Morgan Farm Project

The overall vision and scope of the 'Re-envisioning The Morgan Farm Project' is to preserve and promote the unique historical space of the farm; while promoting experiential learning opportunities to the community members encouraging them to learn, think, and do.

The conceptual framework of this project is not only to provide community members with opportunities surrounding agricultural education but to provide a learning center that serves all ages within the community through various experiential learning options. The Morgan Farm provides a unique historical setting that lends itself to the community as a place of reflection, learning, and doing. This project will be accomplished effectively and efficiently through collaboration and ongoing support with Nibley City, USU extension, grant funding, and community volunteers.

We have created one long-term overarching goal and three short-term goals to accomplish this vision. The long-term goal encompasses the entirety of the farm, while the short-term goals target specific subsections of the farm.

Long-Term Goal

1. Preserve the unique historical space of the farm while promoting experiential learning opportunities for the community.

Short-Term Goals

1. Increase, improve, and promote the community garden space.
2. Improve, invite, and educate the community about the unique historical Morgan Farm while providing an atmosphere to learn, think and do.
3. Create a 4-H learning center for 4-H groups to meet, home specific 4-H animals, and provide 4-H clubs with learning opportunities through experiential learning.

Goal Details

The successful implementation of the goals mentioned above is laid out as follows:

Long-Term Goal

1. Preserve the unique historical space of the farm while promoting experiential learning opportunities for the community.

This long-term goal will be reached by preserving the space as a unique historical location. Because of the nature of the space, it allows us to apply for museum and historical grants, which will enable the preservation of the buildings. There will also be future signage welcoming the public and educating them on the historical features within the space.

Promotional events will also be held at the farm to help not only educate the community and also on a variety of different activities that will take place at the farm, such as; gardening opportunities and workshops, animal care and agricultural education, celebratory community events, and other experiential outdoor classroom experiences.

Short-Term Goals

1. Increase, improve, and promote the community garden space.

- a. Rejuvenate existing gardens while focusing on expansion and aesthetics through collaboration with the USU Extension Office. We will also expand community gardens to provide garden space to high-density housing residents.
 - b. Collaborate with USU extension to offer gardening courses for community members on various gardening topics.
 - i. Collaborate with JayDee Gunnell, Agriculture and Natural Resources Professor, from USU Extension to improve, design, and implement the overall garden plot. JayDee has created community garden spaces in other locations throughout Utah and leads a Master Gardener class. Once the garden is designed, JayDee will supply the expertise and coordinate volunteers to help construct the overall garden plan.
 - c. Allow a small garden space for the 4-H groups so youth can learn about raising crops while implementing peer-to-peer mentorship.
 - i. Collaborate with Dave Frances, Extension Professor from USU Extension, to configure 4-H gardening experiential learning activities. Dave has led many of these projects across Utah and is an expert in his field. We can lean on Dave for best practices to implement 4-H youth in the community garden space.
 - d. Create reflection space within gardens for community members to walk through or sit and reflect through the implementation of walkways, benches, and picnic tables throughout the garden space.
2. Improve, invite, and educate the community about the unique historical Morgan Farm while providing an atmosphere to learn, think and do.
 - a. Provide the community with a variety of animals to see and interact with.
 - b. Educate the community about the beginnings of the Morgan Farm by posting signage at different farm locations informing the visitor about the heritage of the Morgan Farm, helping them gain a sense of place.
 - c. Continue to host events like the Live Nativity, which community members are invited to attend.
 - d. Preserving and sustaining the barn as a historical museum. Due to the historical nature of the barn, it lends itself to museum funding through specific arts and museum grants.
 3. Create a 4-H learning center for 4-H groups to meet, home specific 4-H animals, and provide 4-H clubs with learning opportunities through experiential learning.
 - a. Provide the community with a Morgan Farm 4-H Club to help youth develop skills and take their project to the fair.
 - b. Provide space for 4-H events to be hosted at the Morgan Farm
 - c. Home specific 4-H animals to be raised at the Morgan Farm for the fair.
 - d. Seek funding to create outdoor classrooms that both 4-H clubs and the community can utilize.

- e. Collaborate with the USU Extension 4-H office to utilize expertise for all 4-H interests.

RESOLUTION 23-13

A RESOLUTION APPROVING THE OVERALL VISION AND SCOPE FOR MORGAN FARM

WHEREAS, Nibley City owns parcel 03-125-0014, otherwise known as “Morgan Farm”;

WHEREAS, Nibley City desires the property to be preserved and promote the unique historical space of the farm; while promoting experiential learning opportunities to the community members encouraging them to learn, think, and do;

NOW THEREFORE, IT IS HEREBY RESOLVED BY THE NIBLEY CITY COUNCIL THAT:

1. The attached Overall vision and Scope be approved by the City Council.

ADOPTED BY THE NIBLEY CITY COUNCIL THIS 27 DAY OF JULY, 2023.

Larry Jacobsen, Mayor

ATTEST:

Cheryl Bodily, City Recorder

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Overall Vision and Scope:

Re-envisioning The Morgan Farm Project

Overall Vision and Scope

The overall vision and scope of the 'Re-envisioning The Morgan Farm Project' is to preserve and promote the unique historical space of the farm; while promoting experiential learning opportunities to the community members encouraging them to learn, think, and do.

The conceptual framework of this project is not only to provide community members with opportunities surrounding agricultural education but to provide a learning center that serves all ages within the community through various experiential learning options. The Morgan Farm provides a unique historical setting that lends itself to the community as a place of reflection, learning, and doing. This project will be accomplished effectively and efficiently through collaboration and ongoing support with Nibley City, USU extension, grant funding, and community volunteers.

We have created one long-term overarching goal and three short-term goals to accomplish this vision. The long-term goal encompasses the entirety of the farm, while the short-term goals target specific subsections of the farm.

Long-Term Goal

1. Preserve the unique historical space of the farm while promoting experiential learning opportunities for the community.

Short-Term Goals

1. Increase, improve, and promote the community garden space.
2. Improve, invite, and educate the community about the unique historical Morgan Farm while providing an atmosphere to learn, think and do.
3. Create a 4-H learning center for 4-H groups to meet, home specific 4-H animals, and provide 4-H clubs with learning opportunities through experiential learning.

Goal Details

The successful implementation of the goals mentioned above is laid out as follows:

Long-Term Goal

1. Preserve the unique historical space of the farm while promoting experiential learning opportunities for the community.

This long-term goal will be reached by preserving the space as a unique historical location. Because of the nature of the space, it allows us to apply for museum and historical grants, which will enable the preservation of the buildings. There will also be future signage welcoming the public and educating them on the historical features within the space.

Promotional events will also be held at the farm to help not only educate the community and also on a variety of different activities that will take place at the farm, such as; gardening opportunities and workshops, animal care and agricultural education, celebratory community events, and other experiential outdoor classroom experiences.

Short-Term Goals

1. Increase, improve, and promote the community garden space.
 - a. Rejuvenate existing gardens while focusing on expansion and aesthetics through collaboration with the USU Extension Office. We will also expand community gardens to provide garden space to high-density housing residents.
 - b. Collaborate with USU extension to offer gardening courses for community members on various gardening topics.
 - i. Collaborate with JayDee Gunnell, Agriculture and Natural Resources Professor, from USU Extension to improve, design, and implement the overall garden plot. JayDee has created community garden spaces in other locations throughout Utah and leads a Master Gardener class. Once the garden is designed, JayDee will supply the expertise and coordinate volunteers to help construct the overall garden plan.
 - c. Allow a small garden space for the 4-H groups so youth can learn about raising crops while implementing peer-to-peer mentorship.
 - i. Collaborate with Dave Frances, Extension Professor from USU Extension, to configure 4-H gardening experiential learning activities. Dave has led many of these projects across Utah and is an expert in his field. We can lean on Dave for best practices to implement 4-H youth in the community garden space.
 - d. Create reflection space within gardens for community members to walk through or sit and reflect through the implementation of walkways, benches, and picnic tables throughout the garden space.

2. Improve, invite, and educate the community about the unique historical Morgan Farm while providing an atmosphere to learn, think and do.
 - a. Provide the community with a variety of animals to see and interact with.
 - b. Educate the community about the beginnings of the Morgan Farm by posting signage at different farm locations informing the visitor about the heritage of the Morgan Farm, helping them gain a sense of place.
 - c. Continue to host events like the Live Nativity, which community members are invited to attend.
 - d. Preserving and sustaining the barn as a historical museum. Due to the historical nature of the barn, it lends itself to museum funding through specific arts and museum grants.
3. Create a 4-H learning center for 4-H groups to meet, home specific 4-H animals, and provide 4-H clubs with learning opportunities through experiential learning.
 - a. Provide the community with a Morgan Farm 4-H Club to help youth develop skills and take their project to the fair.
 - b. Provide space for 4-H events to be hosted at the Morgan Farm
 - c. Home specific 4-H animals to be raised at the Morgan Farm for the fair.
 - d. Seek funding to create outdoor classrooms that both 4-H clubs and the community can utilize.
 - e. Collaborate with the USU Extension 4-H office to utilize expertise for all 4-H interests.

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MORGAN FARM

A new vision

Nibley Utah 2010



Value

We have created one long-term overarching goal and three short-term goals to accomplish this vision and scope. The long-term goal encompasses the entirety of the farm, while the short-term goals target specific subsections of the farm.

Overall Vision and Scope



Vision

To preserve and promote the unique historical space of the farm; while promoting experiential learning opportunities to the community members encouraging them to learn, think, and do



Scope

Provide community members with opportunities surrounding agricultural education serves all ages within the community through various experiential learning options.

Our Goals

Overarching Long-Term



Preserve the unique historical space of the farm while promoting experiential learning opportunities for the community.

Short-Term



1 Increase, improve, and promote the community garden space.



2 Improve, invite, and educate the community about the unique historical Morgan Farm while providing an atmosphere to learn, think and do.



3 Create a 4-H learning center for 4-H groups to meet, home specific 4-H animals, and provide 4-H clubs with learning opportunities through experiential learning.



Long - Term Goal

Preserve the unique historical space of the farm while promoting experiential learning opportunities for the community.



A photograph of a garden bed. The foreground and middle ground are filled with large, green, leafy plants, likely squash or pumpkins, growing in rows. They are planted in a bed covered with black plastic mulch. Several pink cosmos flowers are in bloom, some in the foreground and others further back. The background shows a rustic wooden barn with a corrugated metal roof, surrounded by trees. In the far distance, a range of mountains is visible under a clear blue sky.

Short - Term Goal

The Garden Space

The Garden Space

Increase, improve, and promote
the community garden space.



Rejuvenate Existing Garden

Rejuvenate existing gardens while focusing on expansion and aesthetics through collaboration with the USU Extension Office. We will also expand community gardens to provide garden space to high-density housing residents.



Collaborate with USU Extension

Collaborate with USU extension to offer gardening courses for community members on various gardening topics.



4-H Garden Space

Allow a small garden space for the 4-H groups so youth can learn about raising crops while implementing peer-to-peer mentorship.



Reflection Space

Create reflection space within gardens for community members to walk through or sit and reflect through the implementation of walkways, benches, and picnic tables throughout the garden space.

Short - Term Goal

Morgan
The Farm

Nibbley Utah 2010

The Morgan Farm

Improve, invite, and educate the community about the unique historical Morgan Farm while providing an atmosphere to learn, think and do.



Variety of Animals

Provide the community with a variety of animals to see and interact with.



Educate the Community

Educate the community about the history of the Morgan Farm



Host Events

Continue to host community events such as the Live Nativity & Heritage Days



Preservation

Continue preserving and sustaining the barn as a historical museum.

Short - Term Goal



4-H Learning Center

A 4-H Learning Center

Create a 4-H learning center for 4-H groups to meet, home specific 4-H animals, and provide 4-H clubs with learning opportunities through experiential learning.



Youth Fair Projects

Provide the community with a Morgan Farm 4-H Club to help youth develop skills and take their project to the fair.



Educate the Community

Provide space for 4-H events to be hosted at the Morgan Farm.



Home 4-H Animals

Home specific 4-H animals to be raised at the Morgan Farm for the fair.



Outdoor Classrooms

Continue preserving and sustaining the barn as a historical museum.



**BELIEVE IN YOUR VISION
AND DO EVERYTHING YOU
CAN TO TURN IT INTO
REALITY**

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Agenda Item #8

Description	Discussion & Consideration: A Franchise Agreement with All West/Utah Inc.
Presenter	Justin Maughan, City Manager
Staff Recommendation	Move to approve the Franchise Agreement with All West/Utah Inc.
Reviewed By	Mayor, City Manager

Background:

No additional background from last meeting

Previous Background:

Founded in 1912, All West Communications is a regional service provider that offers technologically advanced communications to the communities they serve. They provide internet, TV streaming and phone service to rural areas stretching from northeast Utah to southwest Wyoming.

All West Communications has requested a non-exclusive franchise agreement to allow them to provide fiber to the homes throughout Nibley. This franchise agreement has been modeled after other franchise agreements that the City has in place with other telecom providers, and they would be under the same obligations as other utilities.

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**NIBLEY CITY, UTAH
FRANCHISE AGREEMENT WITH
AND ALL WEST/UTAH, INC.**

Nibley City, a municipal corporation of the State of Utah and All West/Utah, Inc., a Utah corporation (“All West”) hereby enter into an agreement granting to All West and its affiliates a non-exclusive franchise to install, operate and maintain a communications system in, on, over, upon, along, and across the public rights of way of Nibley City.

WHEREAS, All West, has requested that the City grant it the right to install, operate, and maintain a communications system within the public ways of the City; and

WHEREAS, the City Council has found it desirable for the welfare of the City and its residents that such a non-exclusive franchise be granted to the Franchisee; and

WHEREAS, the City Council has the authority under Article 1, Section 23 of the Constitution of the State of Utah and consistent with Article 11, Section 9 of the Constitution of the State of Utah, and the statutes of the United States and the State of Utah to grant franchises for the use of its streets and other public properties; and

WHEREAS, the City is willing to grant the rights requested subject to certain terms and conditions;

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

Section 1. Definitions. For the purposes of this franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

A. “Affiliate” means the entity which owns or controls, is owned or controlled by, or is under common ownership with the Franchisee.

B. “City” means Nibley City, Utah.

C. “Communication(s) Service” shall mean any communications services, communications capacity, or dark fiber, provided by the Franchisee using its Communication System or facilities, either directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in Communication Service, including but not limited to, the transmission of voice, data, or other electronic information, facsimile reproduction, burglar alarm monitoring,

meter reading, and home shopping, or other subsequently developed technology that carries an electronic signal over fiber optic cable, copper cable, or wireless antennas. Communication Service shall also include wireless and non-switched, dedicated, and private line, high capacity fiber optic transmission services to firms, businesses, or institutions within the City.

D. “Communication(s) System” or “Communication(s) Facilities” shall mean the Franchisee’s fiber optic and/or copper cable and/or wireless system constructed and operated within the City’s public ways and shall include all cables, wires, fibers, antennas, conduits, ducts, pedestals, and any associated converter, equipment, enclosures, or other facilities within the City’s public ways designed and constructed for the purpose of providing Communication Service.

E. “FCC” means the Federal Communications Commission or any successor governmental entity hereto.

F. “Franchise” shall mean the initial authorization, or renewal thereof granted by the City, through this Agreement or subsequently adopted agreement, which authorizes construction and operation of the Franchisee’s Communication System and associated Facilities for the purpose of offering Communications Service.

G. “Franchisee” means All West/Utah, Inc., a Utah corporation, or the lawful successor, transferee, assignee, or affiliate thereof.

H. “Person” means an individual, partnership association, joint stock company, trust, corporation, or governmental entity.

I. “Public Way” shall mean the surface of and any space above or below any public street, highway, freeway, bridge, path, alley, court, boulevard, sidewalk, parkway, lane, drive, circle, or any other public right of way, public utility easements, utility strips, or rights of way or easements dedicated or used for compatible uses by third parties, but not including any easement dedicated to or owned by the City that is granted or reserved for the City’s exclusive use and not for use by third parties or the public (such as easements for City utility, water, or drainage facilities), and any temporary or permanent fixtures or improvements located thereon, now or hereafter held by the City in the Service Area which shall entitle the City and the Franchisee the use thereof for the purpose of installing, operating, repairing, and maintaining the Communications System and for the purposes of installing or transmitting the Franchisee’s Communications Service over wires, cables, conductors, amplifiers, appliances, attachments, and other property as may be ordinarily and necessarily pertinent to the Communications System. “Public Way” shall not include any private lane, road, street, easement, or other private right-of-way.

J. “Service Area” means the present municipal boundaries of the City and shall include any additions thereto by annexation or other legal means.

Section 2. Authority Granted. The City hereby grants to the Franchisee, its heirs, successors, legal representatives, affiliates and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege and authority to utilize the public ways of the City for construction and operation of the Franchisee’s Communications System and to acquire, construct, operate, maintain, replace, use, install, remove, repair, reconstruct, inspect, sell, lease, transfer, or to otherwise utilize in any lawful manner, all necessary equipment and facilities thereto for the Franchisee’s Communications System, and to provide Communications Service.

Section 3. Construction Permits Required.

A. Prior to site specific location and installation of any portion of its Communications System within a public way, the Franchisee shall apply for and obtain a Right of Way permit, and pay associated fees pursuant to the ordinances of the City presently existing or as amended from time to time.

B. Unless otherwise provided in said permit, the Franchisee shall give the City at least 48 hours’ notice of the Franchisee’s intent to commence work in the public ways. The Franchisee shall file plans or maps with the City showing the proposed location of its Communication Facilities and pay all duly established permit and inspection fees associated with the processing of the permit. In no case shall any work commence within any public way without said permit except as otherwise provided in this franchise.

Section 4. Grant Limited to Occupation. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the public ways of the City to the Franchisee nor shall anything contained herein constitute a warranty of title.

Section 5. Term of Franchise. The first term of this franchise shall be for a period of thirty (30) years from the date of acceptance as set forth herein, and will continue thereafter on a year to year basis unless either party provides written notice to the other party one hundred twenty (120) days’ notice of its intent to renegotiate the terms and conditions of this Franchise. At the end of that term, additional terms and extensions will be negotiated upon terms and conditions deemed reasonable to both the City and the Franchisee.

Section 6. Non-Exclusive Grant. This Franchise shall not in any manner prevent the City from entering into other similar agreements or granting other or further franchises in, under, on, across, over, through, along or below any of said public ways of the City. However, the City shall not permit any such future franchisee to physically interfere with the Franchisee’s Communication Facilities, provided that the City shall not be responsible for verifying or

inspecting any such future franchisee's plans, permit applications, or construction to ensure there is no physical interference with Franchisee's Communications Facilities. In the event that such physical interference or disruption occurs, the City Engineer may assist the Franchisee and such subsequent Franchisee in resolving the dispute. Further, this franchise shall in no way prevent or prohibit the City from using any of its public ways or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new public ways all in compliance with this franchise.

Section 7. Maps and Records. After construction is complete, the Franchisee shall provide the City with accurate copies of as-built plans and maps in a form and content prescribed by the City Engineer. These plans and maps shall be provided at no cost to the City and shall include hard copies and digital copies in a format specified by the City Engineer. The Franchisee shall provide updated or new plans and maps upon extending, expanding, reconstructing, or relocating the Franchisee's Communications Facilities.

Section 8. Work in Public Ways.

A. During any period of relocation, construction, or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public ways and other public properties in locations as approved by the City so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property. The Franchisee shall, at all times, post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Utah. The Franchisee shall be solely responsible for the Franchisee's compliance with such safety regulations when the Franchisee is performing any work in the public ways, regardless of whether such compliance is expressly made a condition of any permit or other authorization by the City.

B. The Franchisee shall cooperate with the City and all other persons with authority from the City to occupy and use the public ways of the City in coordinating construction activities and joint trenching projects. By June 1 of each calendar year, or such other date as the City and the Franchisee may agree upon from year to year, the Franchisee shall provide the City with a schedule of its proposed construction activities in, around, or that may affect the public ways of the City. The Franchisee shall also meet with the City and other grantees, franchisees, permittees, and other users of the public ways of the City annually or as determined by the City to schedule and coordinate construction activities. The City Engineer shall coordinate all construction locations, activities and schedules to minimize public inconvenience, disruption, or damage to the public ways of the City.

C. If either the City or the Franchisee shall at any time after the installation of the facilities plan to make excavations in an area covered by this franchise and as described in this section, the party planning such excavation shall afford the other upon receipt of written request to do so an opportunity to share such an excavation provided that: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made or unreasonably increase its costs; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and (3) either party may deny such request for safety reasons or if their respective uses of the trench are incompatible.

Section 9. Restoration after Construction. The Franchisee shall, after the installation, construction, relocation, maintenance, removal or repair of its Communication Facilities within the public ways, including upon termination or expiration of this Franchise, restore and remediate the surface of said public ways and any other City-owned property that may be disturbed by the work to at least the same condition the public way or City-owned property was in immediately prior to any such installation, construction, relocation, maintenance or repair, reasonable wear and tear excepted. The Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the public ways or other affected area at its sole cost and expense according to the time and terms specified in the construction permit issued by the City in accordance with the applicable ordinances of the City. The Franchisee shall coordinate the timing, inspection, approval, and other terms of such restoration work with the City Engineer or other designated person with the City.

Section 10. Emergency Work Permit Waiver. In the event of any emergency in which any of the Franchisees' Communication Facilities located in, above, or under any public way break, are damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Franchisee shall immediately take proper emergency measures to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve the Franchisee from the requirement of notifying the City of the emergency work and obtaining any permits necessary for this purpose after the emergency work. The Franchisee shall notify the City by telephone immediately upon learning of the emergency and shall apply for all required permits not later than the second succeeding day during which the City Hall is open for business.

Section 11. Relocation. In the event that at any time during the period of this franchise, the City shall lawfully elect to alter or change any street, trail, alley, public utility easement, bridge, culvert or other public way requiring the relocation of Franchisee's Facilities, then in such event, Franchisee, within 90 days of written notice by the City, shall, weather permitting, remove, relay and relocate the same at its own expense; except that Franchisee shall, in all cases, have the right, in Franchisee's sole discretion, to abandon its Facilities in place, in lieu of

relocation, provided that City shall not be liable for any damage or loss, including interference with or disruption to Franchisee's Communication Services, due to or arising out of Franchisee's election to abandon the Facilities in place. If public funds, other than public funds available from or through the City, are made specifically and exclusively available for the relocation of Facilities, Franchisee may use such public funds to pay the cost of relocation, and Franchisee shall be responsible for such costs as may exceed the available public funds. Notwithstanding the foregoing, Franchisee shall not delay the removal, relaying, or relocation of its Facilities based on the availability or potential availability of such public funds.

In the event the City or a third party requests relocation efforts from the Franchisee for aesthetic purposes, the City or such third party shall pay all costs associated with relocation. The requirement to install the Facilities underground rather than on poles and through overhead lines shall not be considered an aesthetic purpose if imposed on all similarly situated franchisees. Franchisee shall not be required to pay for the relocation of Franchisee's Facilities, and may require advance payment for costs and expense, to the extent such removal or relocation is request solely for aesthetic purposes, in cases where the original location of the Franchisee Facilities was approved by the City through the permitting process.

Franchisee shall, upon the request of any person holding a building moving permit issued by the City, temporarily raise or lower its lines to permit the moving of the building, provided: (a) the expense of such temporary removal shall be paid by the person(s) requesting the same, and Franchisee shall have the authority to require payment in advance; and (b) the Franchisee is given not less than five (5) business days' advance notice to arrange for such temporary line changes.

Section 12. Trimming. Franchisee shall have the authority to trim trees upon and overhanging all streets, alleys, public utility easements, sidewalks and public places of the City so as to prevent the branches of such trees from coming into contact with Franchisee's Facilities. Franchisee shall, when practical, provide notice to the City and to any property owner before commencing such work. Franchisee shall not be required to provide notice in advance of such work in emergency conditions.

Section 13. Dangerous Conditions. Whenever construction, installation or excavation of the Communication Facilities authorized by this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public street, utilities or City-owned property, or significantly endangers the property, life, health, or safety of any individual, the City Engineer may reasonably request the Franchisee to take action to protect the public, adjacent public places, City-owned property, streets, utilities and public ways. Such action may include compliance within a prescribed time. In the event that the Franchisee fails or refuses to promptly take the actions directed by the City or fails to fully comply with such directions, or if emergency

conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public ways to maintain the lateral support thereof or actions regarded as necessary safety precautions and the Franchisee shall be liable to the City for the reasonable costs thereof. City shall not be liable for any damage or loss, including interference with or disruption to Franchisee's Communication Services, due to or arising out of City's reasonable actions under this Section or due to or arising out of Franchisee's failure timely correct the dangerous condition(s).

Section 14. Non-Liability of City for Acts of Franchisee. The City shall not at any time become liable or responsible to any person, firm, corporation, or individual for any damage, injury, including loss of life or loss by reason of the activities of Franchisee under this franchise, and Franchisee hereby indemnifies the City and holds it harmless against all such liabilities, loss, cost, damage, or expense which may be incurred by the City by reason of the exercise or arising out of the implementations of this franchise. The Franchisee's obligation to indemnify the City is not limited or waived in any way by Franchisee's compliance or non-compliance with this Franchise, including the insurance requirements set forth herein. The Franchisee will be required to indemnify the City to the fullest extent allowed by law, regardless of whether the Franchisee has sufficient insurance to cover this obligation.

Section 15. Insurance. The Franchisee shall procure and maintain insurance against claims for injuries to persons or damages to the property which may arise from, or in connection with the exercise of the rights, privileges, and authority granted hereunder to the Franchisee, its agents, representatives, or employees. The Franchisee shall provide to the City for its inspection an insurance certificate naming the City as an additional insured as its respective interests may appear prior to the commencement of any work or installation of any facilities pursuant to this franchise. Such insurance certificate shall evidence:

- A. Comprehensive general liability insurance with limits inclusive of umbrella or excess liability coverage of not less than (1) \$2,000,000.00 for bodily injury or death to each person; and (2) \$3,000,000 for property damages resulting from any one accident.
- B. Automobile liability for owned, non-owned, and hired vehicles with a limit inclusive of umbrella or excess liability coverage of \$300,000 for each person and \$500,000 for each accident.
- C. Workers' compensation within statutory limits.

The liability insurance policies required by this section shall be maintained by the Franchisee throughout the term of this franchise and such other period of time during which the Franchisee is operating without a franchise hereunder, or is engaged in the removal of its Communication System. Payment of deductibles and self-insured retentions shall be the sole

responsibility of the Franchisee. The insurance certificate required by this section shall contain a clause stating that the coverage shall apply separately to each insured against whom a claim is made or suit is brought except with respect to the limits of the insurer's liability. The Franchisee's insurance shall be primary insurance with respect to the City. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Franchisee's insurance and shall not contribute with it.

Section 16. Abandonment and Removal of the Franchisee's Communication

Facilities. Upon the expiration or termination of the rights granted under this franchise, the Franchisee shall, at Franchisee's sole option, remove all of its Communication Facilities from the public ways of the City within ninety (90) days, abandon the Facilities in place, or remove some Facilities and abandon other Facilities. Upon Franchisee's agreements to abandon Facilities in place, the Franchisee shall submit to the City a proposal and instruments for transferring ownership of the abandoned Facilities to the City. Any Facilities that are not removed within one (1) year of termination shall automatically become the property of the City without further approval by Franchisee or compensation, consideration, or notice by City to Franchisee.

Section 17. Municipal Telecommunications License Tax. For the Franchise granted herein, Franchisee shall pay to the City, in accordance with the Utah Municipal Telecommunications License Tax Act, Title 10, Chapter 1, Part 4, Utah Code Annotated, of three and a half percent (3.5%) of Franchisee's gross receipts from telecommunications services attributed to the City as set forth in the Municipal Telecommunications License Tax Act, less any business license fee or business license tax enacted by the City. In the event that Municipal Telecommunications License Tax Act or City ordinance amends or alters the rate, this franchise shall be deemed to have incorporated such amended or altered rate. All payments shall be made to the Utah State Tax Commission, unless otherwise provided by law:

Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

Section 18. Modification. The City and the Franchisee hereby reserve the right to alter, amend, or modify the terms and conditions of this franchise upon the written agreement of both parties to such alteration, amendment or modification.

Section 19. Forfeiture and Revocation.

A. This franchise may be terminated for failure by Franchisee to comply with the material provisions hereof and other provisions of the City ordinances.

B. If the City has reason to believe that the Franchisee is in violation of this franchise or other provisions of the City ordinances, the following procedures shall be followed by the City:

(1) The City shall provide the Franchisee with a detailed, written notice by certified mail detailing the violation, the steps necessary to cure such violation, and the time period within which the violation must be cured. Within thirty (30) days thereafter, Franchisee shall respond demonstrating that no violation occurred, that any problem has been corrected, or with a proposal to correct the problem within a specified period of time.

(2) Franchisee may request an extension of time to cure an alleged violation if construction is suspended or delayed by the City or where unusual weather, natural consequences, extraordinary acts of third parties, or other circumstances which are reasonably beyond the control of the Franchisee delay progress, provided that the Franchisee has not, through its own actions or inactions, contributed to the delay.

(3) If said response is not satisfactory to the City, the City may declare the Franchisee to be in default with written notice by certified mail to Franchisee. Within ten (10) business days after notice to Franchisee, Franchisee may deliver to the City a request for a hearing before the City Council. If no such request is received, the City may declare the franchise terminated for cause.

(4) If Franchisee files a timely written request for hearing, such hearing shall be held within thirty (30) days after the City's receipt of the request therefor. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within ten (10) days after the hearing, the City Council on the basis of the record will make the determination as to whether there is cause for termination and whether the franchise will be terminated. The City Council may, in its sole discretion, fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period, or if the City Council does not grant any additional period, the City Council may, by resolution, declare the franchise to be terminated.

(5) If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction provided the Franchisee is otherwise in compliance with this franchise.

C. Franchisee shall not be deemed to be in default failure, violation or noncompliance with any provision of this franchise where performance was rendered impossible due to an act of God, fire, flood, storm, or other element or casualty, theft, war, disaster, strike, lockout, boycott, prevailing war, or war preparation, or bona fide legal proceedings, beyond the control of the Franchisee.

Section 20. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the locations, elevation, manner or construction and maintenance of facilities by the Franchisee, including undergrounding requirements, and the Franchisee shall promptly conform with all such regulations unless compliance would cause the Franchisee to violate other requirements of the law.

Section 21. Survival. All of the provisions, conditions and requirements of this franchise shall be in addition to any and all other obligations and liabilities the Franchisee may have to the City at common law by statute or by contract. The provisions, conditions and requirements of Section 8 Work in Public Ways; 9 Restoration after Construction; 13 Dangerous Conditions; 14 Non-Liability of City for Acts of Franchisee; 15 Insurance; 16 Abandonment and Removal of the Franchisee's Communication Facilities; shall survive the expiration or termination of this franchise and any renewals or extensions thereof and remain effective until such time as the Franchisee removes its Communication Facilities from the public ways, transfers ownership of said facilities to a third party, or abandons said system in place as provided herein. All of the provisions, conditions, regulations and requirements contained in this franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives, and assigns of the Franchisee and all privileges as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

Section 22. Severability. If any section, sentence, clause or phrase of this franchise shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise.

Section 23. Assignment. This Agreement may not be assigned or transferred without prior written notice to the City except that the Franchisee may freely assign this franchise without notice in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization, or refinancing. In the event of any assignment, Franchisee shall provide written notice to City of such assignment and provide confirmation that such assignee consents and accepts all obligations and conditions of this Franchise and agreement, and Franchisee shall provide updated addresses and other contact information for such assignee. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral.

Franchisee may, without the prior written notice to the City: (1) lease the facilities or any portion thereof to another; (2) grant an indefeasible right of user interest in the facilities or any portion thereof to another; or (3) offer to provide capacity or band width in its facilities to another, provided that Franchisee at all times retains exclusive control over such facilities and remains responsible for locating, servicing, repairing, relocating, or removing its facilities pursuant to the terms and conditions of this franchise.

In no event shall Franchisee pledge, assign, mortgage, or purport to transfer to any person any right whatsoever in or to the public ways.

Section 24. Notice. Any notice or information required or permitted to be given to the parties under this franchise may be sent to the following addresses unless otherwise specified:

City:
Nibley City
455 West 3200 South
Nibley, UT 84321
Attn: Mayor or City Manager

All West/Utah, Inc
50 West 100 North
Kamas, UT 84036

Notice shall be deemed given upon receipt in the case of personal delivery three (3) days after deposit in the U.S. mail in the case of regular mail, or next day in the case of overnight delivery.

Section 25. Entire Franchise. This franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon approval and acceptance of this franchise. Provided further that the City and the Franchisee reserve all rights they may have under the law to the maximum extent possible and neither the City nor the Franchisee shall be deemed to have waived any rights they may have or may acquire in the future by entering into this franchise. Such rights include all rights, privileges, and immunities held or retained by City as a political subdivision of the State of Utah and government entity.

Section 26. Attorney's Fees. If any suit or other action is instituted in connection with any controversy arising under this franchise, the prevailing party shall be entitled to recover all

of its costs and expenses including such sum as the court may judge reasonable for attorney's fees.

Section 27. Governing Law/Venue. This franchise shall be governed by and construed in accordance with the laws of the State of Utah. The venue and jurisdiction over any dispute related to this franchise shall be with the Utah State Court in the county in which the City is located, or with respect to any federal question, with the United States District Court for the District of Utah in Salt Lake City, Utah.

Section 28. Effective Date. This Agreement takes effect on the date is signed by the last party to sign.

[signature pages to follow]

NIBLEY CITY

Name: _____
Title: _____
Date: _____

ATTEST:

City Clerk
(SEAL)

ALL WEST/UTAH, INC.

Name: _____
Title: _____
Date: _____

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Agenda Item #9

Description	Presentation: Review of the Walkability Virtual Academy
Presenter	Levi Roberts, City Planner
Staff & Planning Commission Recommendation	Listen to the presentation. Ask pertinent questions and offer feedback.
Reviewed By	

Background:

Recently, a team focused on improving walkability in Nibley City participated in 10-week Centers for Disease Control (CDC)-sponsored training which included various topics about how to effectively provide more and better opportunities for various residents to walk, bike or generally move about the community. The multi-disciplinary Nibley City Team consisted of the following participants:

Levi Roberts, Nibley City Planner
Natalie Tippetts, Bear River Health Department, Health Educator
Larry Jacobsen, Nibley City Mayor
Tom Dickinson, Nibley City Engineer
Landis, Wenger, Cache County Trails Coordinator
Jeff Gilbert, Cache MPO, Executive Director

The training commenced with a formulation of a Team Action Plan. Within the action plan were the following goals:

1. Update Nibley City Connectivity Standards in 2023
2. Develop and adopt a Nibley City Active Transportation Plan by June 2024
3. Increase the number of children that travel to elementary schools within Nibley City via Active Transportation by 20% within one year.
4. Implement a demonstration project for an advisory shoulder on Hollow Road by 2024

Levi Roberts, who participated in the Academy will present on what was learned and what initiatives we could pursue to improve active transportation in Nibley City.

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Nibley City Walkability Virtual Academy Team Action Plan (TAP)



Nibley City Team

Levi Roberts, Nibley City, Planner

Natalie Tippetts, Bear River Health Department, Health Educator

Jeff Gilbert, Cache MPO, Executive Director

Landis Wenger, Cache County, Trails Coordinator

Tom Dickinson, Nibley City, Engineer

Larry Jacobsen, Nibley City, Mayor



2023 TAP: PSE Goal Implementation

Name of Participant Team: Nibley City

Goal #1: Update Nibley City Connectivity Standards in 2023

Estimated reach: 7,926

Action Steps (to include timeline): <i>Action Steps are specific activities, benchmarks, or achievements that assist in accomplishing the goal; the timeline is an estimated completion date for that stated action step</i>	Responsible Party: <i>Agency or individual responsible for achieving the action step</i>	Additional Comments/ Resources Needed: <i>Added comments or resources useful for achieving the action step</i>
Action Step 1.1: By September 1, 2023, Review Nibley City Code 21.12.060 and identify specific deficiencies in the ordinance	Levi Roberts & Tom Dickinson, Nibley City	
Action Step 1.2: By September 30, 2023, estimate costs and draft RFP to develop connectivity standards	Levi Roberts & Tom Dickinson, Nibley City	
Action Step 1.3: By December 31, 2023, commence the development of connectivity standards	Levi Roberts, Tom Dickinson, 1 Planning Commissioner & City Council member, Nibley City & Landis Wenger, Cache County with consultant	
Action Step 1.4: By April 1, 2024, work with consultant to complete draft of connectivity standards	Levi Roberts, Tom Dickinson, Nibley City & Landis Wenger, Cache County with consultant	
Action Step 1.5: By July 1, 2024, adopt updated connectivity standards	Nibley City Planning Commission, Nibley City Council	



Goal #2: Develop and adopt a Nibley City Active Transportation Plan by June 2024

Estimated reach: 7,926

Action Steps (to include timeline): <i>Action Steps are specific activities, benchmarks, or achievements that assist in accomplishing the goal; the timeline is an estimated completion date for that stated action step</i>	Responsible Party: <i>Agency or individual responsible for achieving the action step</i>	Additional Comments/ Resources Needed: <i>Added comments or resources useful for achieving the action step</i>
Action Step 2.1: By October 31, 2023, release RFP for Active Transportation Plan	Levi Roberts, Nibley City	
Action Step 2.2: By October 31, 2023, include a review of City cross sections to improve active transportation as part of Active Transportation Plan	Levi Roberts, Nibley City	
Action Step 2.3: By December 31, 2023, commence the development of the Nibley City Active Transportation Plan	Levi Roberts, 1 Planning Commissioner & City Council member, Nibley City, Landis Wenger, Cache County, Natalie Tippetts, Bear River Health Department and consultant	Include public engagement to inform plan development
Action Step 2.4: By May 15, 2024, complete draft of Active Transportation Plan	Levi Roberts, Nibley City with consultant	
Action Step 2.5: By July 1, 2024, adopt Nibley City Active Transportation Plan	Planning Commission and City Council	



Goal #3: Increase the number of children that travel to school within Nibley City Elementary via Active Transportation by 20% within one year.

Estimated reach: 467

Action Steps (to include timeline): <i>Action Steps are specific activities, benchmarks, or achievements that assist in accomplishing the goal; the timeline is an estimated completion date for that stated action step</i>	Responsible Party: <i>Agency or individual responsible for achieving the action step</i>	Additional Comments/ Resources Needed: <i>Added comments or resources useful for achieving the action step</i>
Action Step 3.1: By September 30, 2023 collect baseline data on how many students are using various travel methods to get to Nibley Elementary.	Natalie Tippets, Bear River Health Department	Meet with administrators of each school to understand barriers and develop methodology for data collection
Action Step 3.2: By October 31, 2023, identify at least 1 specific program (i.e. walk to school with the Mayor) to encourage more active travel to each respective school	Nibley City in coordination with Nibley Elementary administration and the Bear River Health Department	Be sure to include parents and school staff in the discussion
Action Step 3.3: By October 31, 2023, identify at least 1 pop-up or demonstration project that is geared toward mitigating a barrier for active travel to each school that was identified in the parent survey or have been brought forth by the SRTS committee.	Nibley City in coordination with Nibley Elementary administration	Be sure to include school district and neighborhood residents (if applicable) in this.
Action Step 3.4: By September 30, 2023, send survey to parents assessing facilitators and barriers to active transport to school.	Nibley City in coordination with Nibley Elementary administration and the Bear River Health Department	
Action Step 3.5: By April 30, 2024, construct or implement mitigation strategies identified in Action Steps 3.2 and 3.3.	Levi Roberts & Tom Dickinson, Nibley City, and the Mayor	



Action Step 3.6 By September 30, 2024, Measure and evaluate progress against the goal in Action Step 3.1.	Levi Roberts & Tom Dickinson, Nibley City, and the Mayor	
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Goal #4: Implement a demonstration project for an advisory shoulder on Hollow Road by 2024

Estimated reach: 500

Action Steps (to include timeline): <i>Action Steps are specific activities, benchmarks, or achievements that assist in accomplishing the goal; the timeline is an estimated completion date for that stated action step</i>	Responsible Party: <i>Agency or individual responsible for achieving the action step</i>	Additional Comments/ Resources Needed: <i>Added comments or resources useful for achieving the action step</i>
Action Step 4.1: By January 1, 2024, develop agreement with Cache County to include unincorporated county in this project.	Nibley City in coordination with Cache County	Get commitment from elected officials for political cover and buy-in from Cache County Law Enforcement.
Action Step 4.2: By March 1, 2024, develop educational campaign and relevant materials to advise users of changes to the roadway.	Levi Roberts, Nibley City Natalie Tippetts, Bear River Health Department	Signs by the road with QR code to learn more; maybe a handout for people who live on or near the road with more detailed information. Promote the project in the local media and social media.
Action Step 4.3: By May 15, 2024, collect data on current usage of roadway and gather comments from users	Levi Roberts & Tom Dickinson, Nibley City Landis Wenger, Cache County	
Action Step 4.4: By May 30, 2024, install advisory shoulder and associated signage	Tom Dickinson, Nibley City	
Action Step 4.5: By October 1, 2024, collect data on usage, including survey data from users and residents to re-evaluate effectiveness of treatment	Levi Roberts & Tom Dickinson, Nibley City Landis Wenger, Cache County	



Agenda Item #10 & 11

Description	Public Hearing: Ordinance 23-30- Rezone Parcel 03-043-0012, Located at 4017 South Hollow Rd from R-1 (Residential) to C (Commercial) and Discussion and Consideration: Ordinance 23-30- Rezone Parcel 03-043-0012, Located at 4017 South Hollow Rd from R-1 (Residential) to C (Commercial) (First Reading)
Presenter	Levi Roberts, City Planner
Staff & Planning Commission Recommendation	Move to deny Ordinance 23-30- Rezone Parcel 03-043-0012, Located at 4017 South Hollow Rd from R-1 (Residential) to C (Commercial)
Reviewed By	Mayor, City Manager, City Planner, City Attorney, Planning Commission

Background:

Matt Weston, property owner of Parcel 03-043-0012, located at 4017 Hollow Rd has applied to Rezone the property from R-1 Residential to C Commercial. The Rezone is needed to “allow auto collision repairs and sales of repaired automobiles under a commercial business license.” Currently, auto-related uses are not allowed within residential zones.

The applicant has expressed that the public benefit from the Rezone includes tax revenue from sales of repaired vehicles and continued landscaping improvements to site. The applicant states that the proposal complies with the goals and policies of the Nibley City General Plan by “improv[ing] visibility and care of the site and increas[ing] commercial tax revenue to city.

The applicant states that the use is appropriate for the surrounding area as the “business area will remain in the southwest portion of the lot where the existing outbuilding and parking are currently being used as storage of vehicles. Commercial business transactions area will all be conducted around the area where current shop area is located and west to the state Highway.”

Site Context

A single-family home, including a large outbuilding currently occupy the 2.05 acre site. The property is located on the corner of Hollow Rd and Hwy 165 (Main St). It is

immediately adjacent to the City 4000 South Well, located to the south and within a source water protection area. Low-density residential uses surround the property on all other sides.

General Plan Guidance

The Future Land Use Map designates this property as “low-density residential,” which is typically associated with residential development of 1 unit/acre or lower. Other provisions of the General Plan related to this request include:

- *Land Use Goal 1: Encourage development that respects and preserves the character of the City and provides a mix of commercial, residential housing and some light industrial uses. Carefully plan for growth within the City, ensuring that development occurs in suitable locations and can be efficiently served over the long term.*
- *Land Use Goal 3: Balance land use decisions to recognize individual property rights, consider environmental conditions, and achieve the overall goals of the community.*
- *Land Use Goal 4: Preserve agricultural lands, natural water features, sensitive areas and open spaces to protect the rural character of Nibley.*
- *Commercial and Economic Development Goal 2: Create and maintain a sustainable economic base for Nibley City that will provide tax revenues and increase local employment and convenience of shopping.*
- *Commercial and Economic Development Goal 4: Expand the range of live/work opportunities in Nibley and connect residents to employment opportunities within the City.*

While the City is in support of expanding the range of live/work opportunities and increased employment opportunities, this property is in very close proximity of a City well which provides culinary water to Nibley City residents. Although the establishment of an auto body shop, such as that which is proposed may include mitigation measures that may prevent contamination of this water supply, Staff is concerned with ensuring that future business activities allowed with a commercial zoning designations may lead to a degradation of water quality. Given this consideration and the guidance of the Future Land Use Map which designates this area as ‘low-density residential,’ Staff is recommending to deny this rezone application.

ORDINANCE 23-30

ORDINANCE 23-30- REZONE PARCEL 03-043-0012, LOCATED AT 4017 SOUTH HOLLOW RD FROM R-1 (RESIDENTIAL) TO C (COMMERCIAL)

BE IT ORDAINED BY THE NIBLEY CITY COUNCIL LOCATED AT NIBLEY, UTAH, THAT:

The Parcel 03-043-0012, more particularly described below, is hereby rezoned from Residential (R-1) to Commercial (C).

BEG 2.25 CHS W & 24.15 CHS N FROM SW COR SEC 27 T 11N R 1E (129.4 FT W & 1613.9 FT N MEAS FROM SW COR SD SEC) & TH N 40*28' E 48 FT TO BLACKSMITH FORK CANYON ROAD TH SE ALG SD ROAD 606 FT TO PT 350 FT S & 567 FT E OF BEG TH S 46*45' W 62.4 FT TO E BANK OF CANAL TH N 85*55' W 26 FT TH S 54*05' W 102.7 FT TH N 37*45' W TO E BANK OF ANOTHER CANAL TH NW'LY ALG E BANK 486 FT TO E LN STATE HWY WHICH IS S 12*32' E 173.6 FT FROM BEG TH N 12*32' W 173.6 FT BR TO BEG CONT 2.16 AC LESS 0.11 AC TO UDOT 493/672 NET 2.05 AC M/L

PASSED BY THE NIBLEY CITY COUNCIL THIS 27 day of July, 2023.

Larry Jacobsen, Mayor

ATTEST:_____
Cheryl Bodily, City Recorder

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New

Application Review Status

Final-Review	Not Reviewed	06/25/2023
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Fees		Payments		
Plan Check	\$500.00	06/25/2023	Online	\$650.00
Public Notice Fee	\$150.00	Total Paid		\$650.00
Subtotal	\$650.00			
Amount Paid	\$650.00			
Total Due	\$0.00			

Application Form Data

(Empty fields are not included)

First Name

Matt

Last Name

Weston

Address Street

4017 Hollow Road

City

Nibley

State

UT

Zip Code

84321

Phone

4358811031

Email

mweston71@yahoo.com

Is the property owner representative different from the listed property owner

no

Request Type:

Rezone

Project Address Street

4017 Hollow Road

Tax I.D. Number(s)

03-043-0012

Project Size (Acres)

1

Current Zoning (check all that apply)

R-1- Residential

Proposed Zoning (check all that apply)

C- Commercial

Site Plan and Map (please attach)

 IMG_0594.png

What is the need for the proposed zone change?

Parcel 03-043-0012 rezone to allow auto collision repairs and sales of repaired automobiles under a commercial business license

What will the public benefit be if the zone change is granted?

Tax revenue from sales of repaired vehicles. Continued landscaping improvements to site

How does the proposal comply with the goals and policies of the Nibley City General Plan?

Improve visibility and care of the site and increase commercial tax revenue to city

Is there any annexation of property necessary?

No

Please explain how the anticipated use is appropriate for the surrounding area.

Business area will remain in the south west portion of the lot where the existing outbuilding and parking are currently being used as storage of vehicles. Commercial business transactions area will all be conducted around the area where current shop area is located and west to to the state Highway

What public infrastructure is in place to serve the type and intensity of the proposed use? If needed, could the infrastructure be reasonably extended, at the cost of the property owner or developer?

Public utilities are all in place. Other requirements to the facility as required by Nibley City

Please attach a statement from the County treasurer showing the current tax status of the property.

 CORE - Parcel #03-043-0012 in 2022.pdf

Signature

I certify under penalty of perjury that this application and all information submitted as a part of this application are true, complete, and accurate to the best of my knowledge. I also certify that I am the owner of the subject property and that the authorized agent noted in this application has my consent to represent me concerning this application. Should any of the information or representations submitted in connection with this application be incorrect or untrue, I understand that Nibley may rescind any approval, or take any other legal or appropriate action. I understand that any cost of engineering, legal, fire, or other review incurred by the City shall be my responsibility to pay. I also acknowledge that I have reviewed the applicable sections of the Nibley City Code and that items and checklists contained in this application are basic and minimum requirements only and that other requirements may be imposed that are unique to individual projects or uses.

Posting. Not less than ten (10) days before the public hearing, Applicant is responsible for posting a sign in a prominent place on the property containing, in lettering that may be reasonably read by passersby, the time, date, and location of the public hearing. The posting shall not be required before the application being accepted. However, the City shall require that, not less than ten (10) days before the public hearing, the Applicant provides the City with evidence of compliance with this requirement.

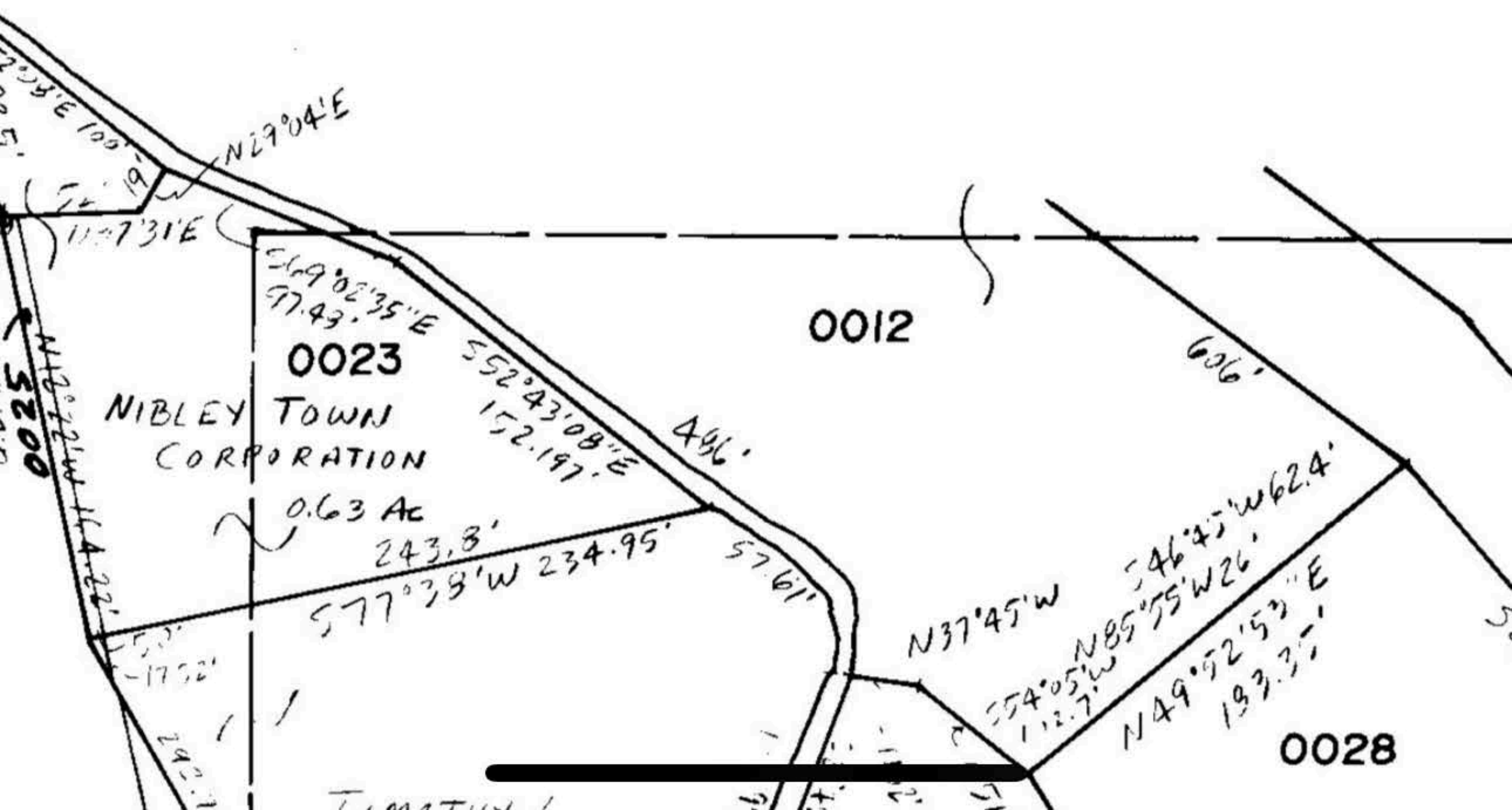
Matt Weston - 06/25/2023 5:38 am



Section 27 Township

SW⁴SW⁴

Sca



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Parcel #03-043-0012 in 2022 - Cache County CORE

Owner(s) History

WESTON, MATTHEW & LAUNA (01/03/2019 - Present) (Vesting: [1210609](#))

Property Address

4017 HOLLOW RD

NIBLEY

Current Mailing Address

4017 HOLLOW RD

NIBLEY, UT 84321-7965

 Tax District: NIBLEY CITY W/CEM(008)

 Tax Status: Taxable

 Parcel History: REM [10/86-0045](#); REM 5/91-0025

 Square Feet: 3171

 Acres: 2.05

 Water Rights: NO

 Building Type: SFR

 Year Built: 2008

 Legal Description: BEG 2.25 CHS W & 24.15 CHS N FROM SW COR SEC 27 T 11N R 1E (129.4 FT W & 1613.9 FT N MEAS FROM SW COR SD SEC) & TH N 40*28' E 48 FT TO BLACKSMITH FORK CANYON ROAD TH SE ALG SD ROAD 606 FT TO PT 350 FT S & 567 FT E OF BEG TH S 46*45' W 62.4 FT TO E BANK OF CANAL TH N 85*55' W 26 FT TH S 54*05' W 102.7 FT TH N 37*45' W TO E BANK OF ANOTHER CANAL TH NW'LY ALG E BANK 486 FT TO E LN STATE HWY WHICH IS S 12*32' E 173.6 FT FROM BEG TH N 12*32' W 173.6 FT BR TO BEG CONT 2.16 AC LESS 0.11 AC TO UDOT 493/672 NET 2.05 AC M/L SUBJ TO UNDERGROUND R/W ESMNT SEE ENTRY #1314084

Taxation Term	Amount
Prior Year Taxes (2021: \$5,781.31)	
 Market Value	\$1,520,000.00
Residential Land & Building	\$1,344,900.00
Secondary Land & Building	\$175,100.00
 Taxable Value	\$914,795.00
 Tax Rate	x 0.008932
 Tax Amount	\$8,170.95
 Last Payment Date	11/18/2022

Payment Category	Amount
 Principal	\$8,170.95
 Payments	\$8,170.95
 Current Amount Due	\$0.00

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Agenda Item #12 &13

Description	Public Hearing: Ordinance 23-31- Annexation Agreement with Watermark, LLC, Setting Forth Zoning and Development Obligations for Parcels 03-007-0010, 03-007-0011, and 03-007-0023, Located at Approximately 1250 W 2200 S, Assigning a Zone of R-M Mixed Residential with Modifications, In Advance of a Future Annexation Application and Discussion and Consideration: Ordinance 23-31- Annexation Agreement with Watermark, LLC, Setting Forth Zoning and Development Obligations for Parcels 03-007-0010, 03-007-0011, and 03-007-0023, Located at Approximately 1250 W 2200 S, Assigning a Zone of R-M Mixed Residential with Modifications, In Advance of a Future Annexation Application (First Reading)
Presenter	Levi Roberts, City Planner
Staff & Planning Commission Recommendation	Ordinance 23-31- Annexation Agreement with Watermark, LLC, Setting Forth Zoning and Development Obligations for Parcels 03-007-0010, 03-007-0011, and 03-007-0023, Located at Approximately 1250 W 2200 S, Assigning a Zone of R-M Mixed Residential with Modifications, In Advance of a Future Annexation Application, for first reading
Reviewed By	Mayor, City Manager, City Planner, City Attorney, Planning Commission

Background:

Watermark, LLC, owner of Parcels 03-007-0010, 03-007-0011, and 03-007-0023, located at approximately 1250 W 2200 S, has proposed an agreement in anticipation of a future annexation application with Nibley City. The 11.13-acre property is currently located within Logan City, but is within Nibley City's future annexation area. In order for the property to annex into Nibley City, it must be disconnected from Logan City. The applicant has expressed that they would like to develop an agreement in advance of pursuing a disconnection from Logan and annexation to Nibley to provide assurance that the City would annex the property with future zoning and development rights for the property that the applicant is seeking.

The applicant has expressed that they would like to develop the property with higher-density residential uses on the property. The property is currently zoned commercial in Logan City, which only allows for residential uses (of up to 30 units per gross acre) if the ground floor is dedicated to commercial uses. The property owner petitioned Logan City to rezone the property as RM-30, which allows for up to 30 residential units per gross acre without a commercial requirement. However, this application was denied.

The applicant has provided a concept plan which includes 180 housing units, including 152 multi-family units and 28 townhome units. This equates to 16.17 units/net developable acre. The proposed agreement would provide the zoning framework for the property owner to develop the property at the scale of the proposed site plan, assigning the property a R-M (Mixed Residential) Zone with several concessions to the restrictions of the R-M zone. Namely, the agreement would allow for the following:

- This area would be eligible for R-M zone designation, despite restrictions included in R-M Application Map of NCC 19.12.040(6).
- Additional residential density of 16.17/gross acre would be allowed above the allowable 10 units/net developable acre, currently allowed under the R-M zone (without TDR credits).
- One building would be 57 feet tall, exceeding the maximum height of 50 ft allowed within the R-M zone.
- Required parking would be 354 spaces, despite the parking restrictions of NCC 19.12.040(13), which would require 376 parking stalls to support the development.
- Minimum frontyard setbacks would be reduced to 10', despite the restrictions of NCC 19.12.040(4), which requires a 20' setback.
- Open space requirements would be reduced from 35% of net developable acreage to those areas shown on the site plan.

These concessions are allowed under UCA 10-9a-532(2)(a)(iii), which states:

A development agreement may not allow a use or development of land that applicable land use regulations governing the area subject to the development agreement would otherwise prohibit, unless the legislative body approves the development agreement in accordance with the same procedures for enacting a land use regulation under Section 10-9a-502, including a review and recommendation from the planning commission and a public hearing.

Because the process for approving this agreement is the same as if the land use ordinance itself were changed, City may enter into such an agreement, despite the conflicts within the adopted ordinance.

In addition to these development rights, this agreement requires the applicant to:

- Complete all required improvements for roadways adjacent to the development, including 2200 South and 1200 West.
- Install trail on south edge of property according to Trails Master Plan.
- Relocation of any sewer lines or other utilities associated with the development shall be performed by the applicant.
- All utilities on private property, including private lanes, shall be maintained by the property owner or HOA.

Site Context

The property is adjacent to Thomas Edison Elementary to the South and Firefly Estates to the East. Low to medium density residential uses surround the property to the north and west. The property is in close proximity to Hwy 89/91 and to 1000 West/1200 West corridor, with access from 2200 South.

General Plan/Annexation Plan guidance

This area is included in Nibley City's annexation declaration area of the Annexation Policy Plan, which is intended to guide decision-making regarding future annexations.

The Future Land Use Map of the General Plan denotes this area as "medium density residential." Although the general plan provides no definition for medium density residential, it is generally associated with development between 2-10 units/acre.

Other general plan provisions which relate to this request include the following:

- Residential Development and Housing Vision: *While retaining the character and form of established neighborhoods, residential development in Nibley will emphasize the conservation of open space and, using that conservation process, will incorporate a variety of housing forms.*

The Nibley City Moderate Income Housing Plan, an appendix to the General Plan provides the following strategy:

- *Rezone for densities necessary to facilitate the production of moderate income housing*

Associated with this strategy is the following related action item:

- *Consider additional areas in which the R-M zone could apply.*

If approved, this development would diversify the housing stock of Nibley City, and may provide housing at densities necessary to facilitate the production of moderate-income housing. At this point in time, there are no additional areas outside of another property located in Logan City at 2200 S & 800 W, which is eligible for R-M zoning. Although, the density would be considered high-density residential in an area that the Future Land Use Plan denotes as medium density residential, higher density in this location may be appropriate due to its relative location to high capacity transportation facilities and access to jobs and services.

Other Considerations & Conclusion

As noted above, this area is currently located within Logan City with a Commercial zone designation. If the zoning is not advantageous to the property owner/developer, it is likely that the property would remain in Logan City and would result in impacts that the City would bare without additional revenue generated from impact fees and property taxes. These impacts include additional use and stress on City Parks, streets and other

infrastructure. Considering this reality and the guidance of the General Plan and Annexation Policy Plan, Staff is recommending approval of this agreement.

ORDINANCE 23-31

ANNEXATION AGREEMENT WITH WATERMARK, LLC, SETTING FORTH ZONING AND DEVELOPMENT OBLIGATIONS FOR PARCELS 03-007-0010, 03-007- 0011, AND 03-007-0023, LOCATED AT APPROXIMATELY 1250 W 2200 S, ASSIGNING A ZONE OF R-M MIXED RESIDENTIAL WITH MODIFICATIONS, IN ADVANCE OF A FUTURE ANNEXATION APPLICATION

WHEREAS, The subject property is within Nibley City's Annexation Declaration Area and can be efficiently serviced by Nibley City Utilities; and

WHEREAS, The City, through the City Planning Commission and City Council, have reviewed the proposed Annexation and the proposed waivers or modifications of City Code requirements requested by Petitioner, and find that the Annexation and Development of the Property, as generally depicted in the Development Plan, will be beneficial to the City and its residents and will comply with the goals and objectives of the City's general plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF NIBLEY, UTAH THAT:

1. The attached Annexation Agreement be approved.
2. The Agreement shall not take place until the Developer and City have signed the attached Agreement.
3. All ordinances, resolutions and polices of the City, or parts thereof, inconsistent herewith, are hereby repealed, but only to the extent of such inconsistency. This repealer shall not be construed as reviving and law, order, resolution or ordinance or part thereof.

PASSED BY THE NIBLEY CITY COUNCIL THIS 27 DAY OF July, 2023.

Larry Jacobsen, Mayor

ATTEST:

Cheryl Bodily, City Recorder

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WHEN RECORDED RETURN TO:

Ballard Spahr LLP
One Utah Center, Suite 800
201 South Main Street
Salt Lake City, UT 84111-2221
Attn: Steven P. Mehr

Tax Serial Nos. 03-007-0010, 03-007-0011, 03-007-0023

ANNEXATION AGREEMENT

The parties NIBLEY CITY (the “**City**”), a Utah municipality and a political subdivision of the State of Utah, and WATERMARK PROJECT LLC, a Utah limited liability company or assigns (the “**Petitioner**”), enter into this Annexation Agreement (this “**Agreement**”), effective as of the date this Agreement is recorded in the office of the Cache County Recorder (the “**Effective Date**”).

RECITALS

A. Petitioner owns certain real property located within Cache County, within the municipal boundaries of Logan City, adjacent to the municipal boundaries of the City, described as Cache County parcels 03-007-0010, 03-007-0011, and 03-007-0023, and more particularly described in Exhibit A attached hereto (the “**Property**”).

B. Petitioner desires to disconnect the Property from Logan City (the “**Disconnection**”) and annex the Property into the City (the “**Annexation**”), in order to access City utilities and facilities to facilitate the development or subdivision of the Property.

C. The approval of the Annexation is a legislative decision to be made by the appropriate city bodies, to which approval Petitioner has no entitlement or vested right.

D. The City has adopted codes, ordinances, regulations, drawings, standards, specifications, policies, and resolutions (collectively, “**City Code**”) that govern the development of land, the construction of private and public infrastructure and buildings, and the connection to and use of City facilities and utilities.

E. Petitioner has requested certain waivers or modifications of City Code requirements that would normally apply to the development or subdivision of the Property, in connection with the Annexation, in order to develop the Property (the “**Development**”) according to the preliminary and conceptual development plan attached hereto as Exhibit B (“**Development Plan**”).

F. The City, through the City Planning Commission and City Council, have reviewed the proposed Annexation and the proposed waivers or modifications of City Code requirements

requested by Petitioner, and find that the Annexation and Development of the Property, as generally depicted in the Development Plan, will be beneficial to the City and its residents and will comply with the goals and objectives of the City's general plan.

G. The parties desire to enter into this Agreement to establish the terms and conditions by which the City approves of the Annexation of the Property and to determine the specific regulations and requirements of the City that will apply to the subdivision or Development of the Property once it is annexed into the City.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereafter set forth, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

1. City Obligations. All obligations of the City are subject to the reserved legislative powers of the City described in Section 5 *below*.

1.1. Annexation Approval. The City shall, to the extent permitted by Utah law and without waiving its right or duty to take the procedural steps and analyze the substantive considerations required by Utah law, grant Petitioner's annexation petition for the Property and annex the Property into the City.

1.2. Annexation Protest. If Annexation is protested and goes before the Cache County Boundary Commission, the City may, in its discretion, deny the Annexation or seek to obtain from the Boundary Commission approval for the Annexation. If the City decides to seek to obtain approval, the City shall coordinate its efforts with Petitioner.

1.3. Zoning. Upon successful Annexation, the Property shall be zoned R-M Mixed Residential (the "**Zoning**"), subject to the modifications to the Zoning and City Code set forth below, and Petitioner shall have a vested right to the Development of the Property according to the Zoning, as modified by this Agreement:

1.3.1. This area shall be eligible for R-M zone designation, despite restrictions included in R-M Application Map of NCC 19.12.040(6).

1.3.2. The total allowed number of residential units of the Development shall be no more than 180 residential units with 354 parking spaces, allocated as follows:

1.3.2.1. Multi-Unit Condominium/Apartment: 152.

1.3.2.2. Townhome: 28.

1.3.3. The uses allowed within the Development shall be those uses authorized by City Code for the Zoning and the uses allowed by Nibley City Code.

1.3.4. The maximum height of all buildings within the development is 57 feet.

1.3.5. Amenities: It is anticipated the development will provide the following open space amenities:

1.3.5.1. Sports Court

1.3.5.2. Playground

1.3.5.3. Swimming Pool

1.3.6. The total number of residential units or lots allowed, created, or developed within the Development shall be limited to the maximum number and type allowed under this Section 1.3, regardless of whether such units or lots are developed by Petitioner or by an assignee, transferee, or other successor-in-interest of Petitioner and regardless of whether additional or different units or lots are shown in the Development Plan.

2. Petitioner Obligations.

2.1. Recordation. This Agreement shall only be effective upon recordation. Petitioner shall ensure that no other interests, mortgages, liens, or other encumbrances have priority or precedence over this Agreement.

2.2. Disconnection.

2.2.1. Petitioner shall be responsible for and shall bear all costs to prepare, file, and prosecute all applications, documents, and instruments necessary to effectuate the Disconnection. If the Disconnection is protested, challenged, or rejected, Petitioner may, in its discretion, file and prosecute court proceedings to complete the Disconnection. This Agreement shall remain valid during the pendency of any such proceeding.

2.2.2. The Disconnection and the Annexation may occur simultaneously through a municipal boundary adjustment if Logan City is amenable to such process. Petitioner shall be responsible for all costs to prepare and complete all plats and surveys, and City shall assist with coordinating such boundary adjustment.

2.2.3. If Petitioner fails to pursue Disconnection within two years from the date of execution of this Agreement, elects to not challenge any protest, challenge, or rejection of the Disconnection, or if Petitioner's challenge is unsuccessful and Disconnection is denied by a final order of a court or other body with jurisdiction following any appeals, this Agreement shall terminate, and neither party shall have any further right or obligation hereunder.

2.3. Development.

2.3.1. General Standard. Petitioner shall develop, construct, improve, and maintain the Development in a manner substantially similar to and in substantial compliance

with the Development Plan, attached hereto, and the terms, conditions, and requirements set forth below and in City Code.

2.3.1.1. Petitioner shall have the right to make non-material changes and adjustments to the Development without amending this Agreement, including adjusting lot boundary configuration and location, building and unit configurations and location, interior road alignments and parking areas, landscaping and architectural details. Such changes and adjustments shall be reviewed and approved by the City through the plat and construction plan review and approval processes.

2.3.1.2. Material changes to the Development and Development Plans shall not be authorized by the City except by way of an amendment to this Agreement. All amendments to this Agreement shall be in writing and shall be approved in the same manner as this Agreement, i.e., pursuant to the City's public notice, hearing, review, and approval processes. Such material changes include:

2.3.1.2.1. Increase in the number of residential lots or units, a decrease of minimum residential lot or unit size, or a decrease of minimum residential lot frontage or setback requirements;

2.3.1.2.2. Decreases to the amount or size of public amenities, open space, or common area or substantial relocation of public amenities, open space, or common area;

2.3.1.2.3. Variances or exceptions to the Zoning or other City Code not set forth herein; and

2.3.1.2.4. Material changes to the functional design of the Development that materially affects vehicular and pedestrian traffic and parking functionality, drainage, utility connectivity, or other design characteristics.

2.3.2. Utility Improvements.

2.3.2.1. Existing Utilities. Petitioner is aware of existing utilities near and within the Property. This includes but is not limited to the existing sewer lines and sewer manholes that extend under proposed Building C of Exhibit B, the Development Plan, submitted by Petitioner. Petitioner acknowledges that the sewer lines and manholes cannot be located under any buildings or structures and that any relocation of the sewer pipes, manholes, or other utilities to facilitate construction, development and/or the Development Plan shall be performed by the Petitioner and their cost.

2.3.3. Streets and Related Facilities. Petitioner shall comply with the following obligations related to the improvement, dedication, and construction of street and street facilities:

2.3.3.1. 2200 South. Petitioner shall complete, construct, install, assure, and warranty, according to City Code, the following improvements along the frontage of the Property adjacent to 2200 South (collectively, “**2200 Improvements**”): sidewalk, park strip, curb, gutter, and the remaining asphalt and road base required for 2200 South to comply with the City’s 66-foot, two lane collector street cross-section (TS-9), set forth in the Nibley City Design Standards, Construction Standards, and Specifications and City Code. Petitioner shall also dedicate to the City the areas within the Property required for the 2200 Improvements.

2.3.3.2. 1200 West. Petitioner shall complete, construct, install, assure, and warranty, according to City Code, the following improvements along the frontage of the Property adjacent to 1200 West South (collectively, “**1200 Improvements**”): sidewalk, park strip, curb, gutter, and the remaining asphalt and road base required for 1200 West to comply with the City’s 66-foot, two lane collector street cross-section (TS-7), set forth in the Nibley City Design Standards, Construction Standards, and Specifications and City Code. Petitioner shall also dedicate to the City the areas within the Property required for the 1200 West Improvements.

2.3.3.3. Trail Petitioner shall complete, construct, install, assure, and warranty, according to City Code, the following improvements along the south edge of the property: 8-foot wide paved trail according to alignment of Nibley City Trails, Recreation and Open Space Master Plan, with a direct connection to the property line of Thomas Edison Elementary, as depicted on the Trail Plan attached hereto as Exhibit C.

2.3.4. Open Space and Amenities. Petitioner shall provide a minimum 4.82 acres of public/private landscaped, open space areas within the Development.

2.3.5. Impact Fees. The Petitioner will be required to pay impact fees in accordance with Nibley City Code and the Consolidated Fee Schedule as adopted at the time of building permit.

2.3.6. Utility Maintenance. The property owner or Private Home Owners’ Association (HOA) shall maintain all private roads, including snow removal, open space and associated amenities, drainage areas, water, sewer and stormwater utilities within the development.

2.4. Waiver of Rights. By consenting to the conditions of approval of the Annexation and by executing this Agreement, Petitioner waives and releases any right Petitioner may have had to challenge the reasonableness, lawfulness, or appropriateness of the City’s requirements regarding the improvements set forth herein, which right Petitioner may have otherwise had pursuant to Utah Code § 10-9a-703. This includes any claim that the construction of all such improvements and the dedication of any related property were unlawful or unreasonable exactions, pursuant to Utah Code § 10-9a-508, or any challenge to the assessment or payment of impact fees required by this Agreement, pursuant to Utah

Code §§ 11-36A-701, -703. Petitioner further agrees that the City may withhold approvals of subdivision plats, building permits, certificate of occupancy, utility connections, and other permits, applications, or licenses, in order to enforce and compel compliance with this Agreement, despite any provision to the contrary under Utah Code §§ 10-9a-509, -603(3)(a), -604.5(3), -802(2).

3. Fees. Petitioner agrees to pay all applicable fees of the City, Logan City, and any other applicable government entity, as such fees exist on the applicable date when payment is due, including but not limited to utility fees, hookup fees, impact fees, inspection fees, building permit fees, construction and excavation permit fees, other permit fees, and application fees.

4. Infrastructure Costs and Standards. Petitioner is required, at Petitioner's sole expense and effort, to construct all infrastructure, project improvements, and system improvements required by this Agreement and City Code and to construct the same in the size, scale, location, magnitude, and capacity required by this Agreement and applicable provisions of the City Code.

5. Reserved Legislative Powers.

5.1. This Agreement, or any part of this Agreement, will not limit the exercise of the police powers of the City to enact ordinances, standards, or rules regulating development, zoning, subdivision, growth management, transportation, annexation, municipal services, and other land use matters, or to determine the necessity and wisdom of the approval of any legislative matter related to this Agreement, including the Annexation and the Zoning. Notwithstanding the retained power of the City to enact such legislation under its police power, such legislation shall not modify Petitioner's vested rights as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.

5.2. Both parties understand that any legislative action by the City Council, including the approval of this Agreement and the approval of the Annexation, is subject to initiatives, referral, or challenge by individuals or groups of citizens. Petitioner agrees that the City may respond to, approve, or reject any initiative, referral, or challenge as the City deems appropriate in its discretion, guided by the standards in Utah law. Petitioner agrees that the City shall not be found to be in breach of this Agreement due to the City's response to, approval of, or rejection of any initiative, referral, or challenge or due to the success of an initiative, referendum, or challenge, so long as the initiative, referendum, or challenge relates to any legislative act contemplated or undertaken in connection with this Agreement. In the case of a successful initiative, referendum, or challenge, this Agreement and the approval of the Annexation shall be voided.

6. Compliance with City Requirements and Standards. Unless otherwise expressly provided in this Agreement, Petitioner acknowledges that nothing in this Agreement will be deemed to relieve Petitioner from its obligations to comply with all applicable requirements, standards, specifications, drawings, regulations, policies, resolutions, and ordinances of the City for development of the Property and recordation of subdivision plats, including those related to the

payment of unpaid fees, the approval of site plans or plats, the approval of building permits and construction permits, the construction and installation of public infrastructure, and the providing of completion and warranty assurances. Petitioner shall comply with all requirements of the City Code and the Zoning related to the Development of the Property, except as the same are expressly modified herein.

7. Covenants Running with the Land. The provisions of this Agreement will constitute real covenants, contract and property rights and equitable servitudes, which will run with all of the land subject to this Agreement. The burdens and benefits hereof will bind and inure to the benefit of each of the parties hereto and all successors in interest to the parties hereto. Each successor in interest will succeed to those benefits and burdens of this Agreement that pertain to the portion of the Property to which the successor holds title.

8. No Agency, Joint Ventures or Partnership. City and Petitioner are not agents of each other, and this Agreement creates no agency relationship, joint venture, or partnership between City and Petitioner.

9. Representations. The parties represent and warrant that the person signing this Agreement on behalf of each party is authorized to so sign and to bind the party to the obligations set forth herein, and that all steps and procedures required by a party to execute and enter into this Agreement have been completed.

10. Incorporation of Recitals, Introductory Paragraphs, and Exhibits. The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals and all Exhibits referred to or attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

11. Default and Remedies. Unless otherwise provided in this Agreement, in the event of any default or breach of this Agreement or any of its terms or conditions, the defaulting party or any permitted successor to such party must, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and in any event cure or remedy the breach within 30 days after receipt of such notice. In the event that such default or breach cannot reasonably be cured within the 30-day period, the party receiving such notice must, within the 30-day period, take reasonable steps to commence the cure or remedy of such default or breach, and must continue diligently thereafter to cure or remedy such default or breach in a timely manner. In case such action is not taken or diligently pursued, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to:

11.1. Cure or remedy such default or breach, such as proceedings for injunctive relief, to compel specific performance by the party in default or breach of its obligations, or declaring a material breach by the party; and/or

11.2. Subject to Section 11.2.1 below, in the case of a material uncured breach, the non-defaulting party may terminate this Agreement.

11.2.1. If the City elects to terminate this Agreement due to a material default of Petitioner, then the City shall give Petitioner written notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City legislative body at a duly noticed public meeting. Petitioner shall have the

right to offer written and oral evidence prior to or at the time of said public meeting. If the City legislative body determines that a material default has occurred and is continuing and elects to terminate this Agreement, the City legislative body shall send written notice of termination of this Agreement to Petitioner in accordance with Section 12.9 hereof, and this Agreement shall thereby be terminated. The City may thereafter pursue any and all remedies at law or equity.

12. Other Miscellaneous Terms.

12.1. Certain Meanings. The singular will include the plural; the masculine gender will include the feminine; “shall” and “will” and “must” are mandatory; “may” is permissive.

12.2. Severability. If any provision of this Agreement or application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement will continue in full force and effect.

12.3. Construction. This Agreement has been reviewed and revised by legal counsel for Petitioner and the City, and no presumption or rule that ambiguities will be construed against the drafting Party will apply to the interpretation or enforcement of this Agreement.

12.4. Further Assurances, Documents, and Acts. Each of the parties agrees to cooperate in good faith with the other, and to execute and deliver such further documents, and to take all further acts reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement will be carried out by each party as allowed by law.

12.5. Assignment. Petitioner may assign all or any portion of its interest in this Agreement and/or the Property, provided, however, Petitioner’s assignee must assume in writing Petitioner’s obligations and duties under this Agreement. The rights of the City under this Agreement will not be assigned.

12.6. Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Utah.

12.7. Attorney Fees. If any party hereto is required to engage the services of counsel by reason of default of another party, including in connection with the default procedures set forth in Section 11 *above*, the non-defaulting party will be entitled to receive from the defaulting party the non-defaulting party’s costs and reasonable attorney’s fees, both before and after judgment, including any appeals thereof, and whether or not suit be filed or if the provisions of this Agreement are enforced through arbitration.

12.8. Mediation. In the event of a dispute concerning the terms or conditions of this Agreement or arising out of this Agreement the parties may but shall not first be required to seek resolution of the dispute via mediation.

12.9. Notices. Any notice, demand or document which any party is required to be in writing, and may be personally delivered or given or made by United States registered or

certified mail, return receipt requested, by overnight delivery service (e.g., Federal Express), addressed as follows:

To the City:

Nibley City
Attn: Mayor and City Manager
455 West 3200 South
Nibley, UT 84321

To the Petitioner:

Watermark Project LLC
Attn: Steven P. Mehr
201 South Main Street, Suite 800
Salt Lake City, UT 84111

13. Term. The term of this Agreement shall be a period commencing on the Effective Date and expiring on December 31, 2070.

~~SIGNATURE PAGE TO FOLLOW~~

IN WITNESS WHEREOF, this Annexation Agreement has been by the person duly authorized to execute the same for and on behalf of WATERMARK PROJECT LLC, and by persons duly authorized to execute the same for and on behalf of Nibley City, acting by and through its City Council, as of the Effective Date.

NIBLEY CITY

By: _____
Mayor

ATTEST:

By: _____
City Recorder

PETITIONER
WATERMARK PROJECT LLC

By: _____
Printed Name:
Title:

STATE OF UTAH)
 : ss
County of _____)

On the ____ day of _____, 20____, personally appeared before me,
_____, the _____ of Petitioner, the
signer of the foregoing instrument, who duly acknowledged to me that they executed the same.

NOTARY PUBLIC

Exhibit A
Legal Description of the Property

The following described property is located in Cache County, State of Utah:

PARCEL 1: 03-007-0010

BEGINNING 25 FEET SOUTH AND 555.5 FEET WEST OF THE CENTER OF SECTION 17, TOWNSHIP 11 NORTH, RANGE 1 EAST OF THE SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 3°46'30" EAST 108.9 FEET NORTH 85°48'30" EAST 86.9 FEET SOUTH 0° 55'30" EAST 431 FEET TO THE NORTH LINE OF SIERRA PARK PHASE 1, THENCE SOUTH 85°30'27" WEST 306.39 FEET TO THE NORTHWEST CORNER OF LOT 1 SAID SUBDIVISION, THENCE NORTH 22°28'30" WEST TO A POINT SOUTH 66°25'30" EAST 123.7 FEET AND SOUTH 22°28'30" WEST 99.0 FEET AND NORTH 57°59'30" WEST 30 FEET AND SOUTHERLY FROM A POINT SOUTH 89°52'30" WEST 308.3 FEET FROM BEGINNING, THENCE NORTH 66°25'30" WEST 123.7 FEET, THENCE NORTH 22°28'30" EAST 99.0 FEET THENCE SOUTH 57°59'30" EAST 30 FEET, THENCE NORTHERLY TO A POINT SOUTH 89°52'30" WEST 308.3 FEET FROM BEGINNING, THENCE NORTH 89°52'30" EAST 308.3 FEET TO BEGINNING.

ALSO: BEGINNING 15 FEET SOUTH AND 491 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION, THENCE SOUTH 118 FEET WEST 1.9 FEET NORTH 118 FEET EAST 1.9 FEET TO BEGINNING.

SUBJECT TO A BOUNDARY LINE AGREEMENT FILED IN ENTRY # 1184035 IN BOOK 1979 PAGE 565.

SUBJECT TO A BOUNDARY LINE AGREEMENT FILED IN ENTRY #1256336 IN BOOK 2172 PAGE 1130.

SUBJECT TO A BOUNDARY LINE AGREEMENT FILED IN ENTRY #1256337 IN BOOK 2172 PAGE 1134.

SUBJECT TO A BOUNDARY LINE AGREEMENT FILED IN ENTRY #1295909 IN BOOK 2276 PAGE 1818.

PARCEL 2: 03-007-0011

BEGINNING 491 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 11 NORTH, RANGE 1 EAST SALT LAKE BASE AND MERIDIAN, RUNNING THENCE SOUTH 8 RODS, THENCE EAST 10 RODS, THENCE NORTH 8 RODS, THENCE WEST 10 RODS TO BEGINNING.

SUBJECT TO THE EXISTING RIGHT OF WAY OF THE ABOVE REFERENCED FIELD ROAD.

PARCEL 3: 03-007-0023

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF THE ROAD AND THE WEST LINE OF THE ROAD BEING 25 FEET SOUTH AND 18.4 FEET WEST OF THE CENTER OF SECTION 17, TOWNSHIP 11 NORTH, RANGE 1 EAST SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH ALONG THE WEST LINE OF THE ROAD TO A POINT NORTH 0°29'09" WEST 153.34 FEET ALONG THE WEST LINE OF 1200 WEST STREET FROM THE NORTHEAST CORNER OF LOT 2 SIERRA PARK PHASE 1, THENCE NORTH 89°20'48" WEST 435.05 FEET TO A POINT ON THE NORTH LINE OF SIERRA PARK PHASE 1, THENCE NORTH 427.65 FEET, THENCE WEST 86.9 FEET, THENCE NORTH 108.9 FEET TO THE SOUTH LINE OF THE EAST-WEST ROAD AT A POINT 540.5 FEET WEST OF BEGINNING, THENCE EAST 66 FEET, THENCE SOUTH 108 FEET, THENCE EAST 165 FEET, THENCE NORTH 108 FEET, THENCE EAST 309.5 FEET ALONG SOUTH LINE OF THE ROAD TO BEGINNING.

Exhibit B

Preliminary and Conceptual Development Plan for Property

Exhibit C
Trail Plan

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BUILDING A - 68 UNITS
BUILDING B - 48 UNITS
BUILDING C - 36 UNITS
TOTAL MF UNITS = 152 UNITS

TOTAL SITE UNITS WITH TOWNHOMES = 152 +
28 = 180 UNITS

PARKING-
TOTAL SITE PARKING SHOWN = 354 SPACES
ONE BED = 1.89 PER UNIT = 166 SPACES
TWO BED = 2 PER UNIT = 128 SPACES
VISITOR = 180/3 = 60 SPACES
BIKE = .5 PER BEDROOM = 150 REQUIRED 160 PROVIDED

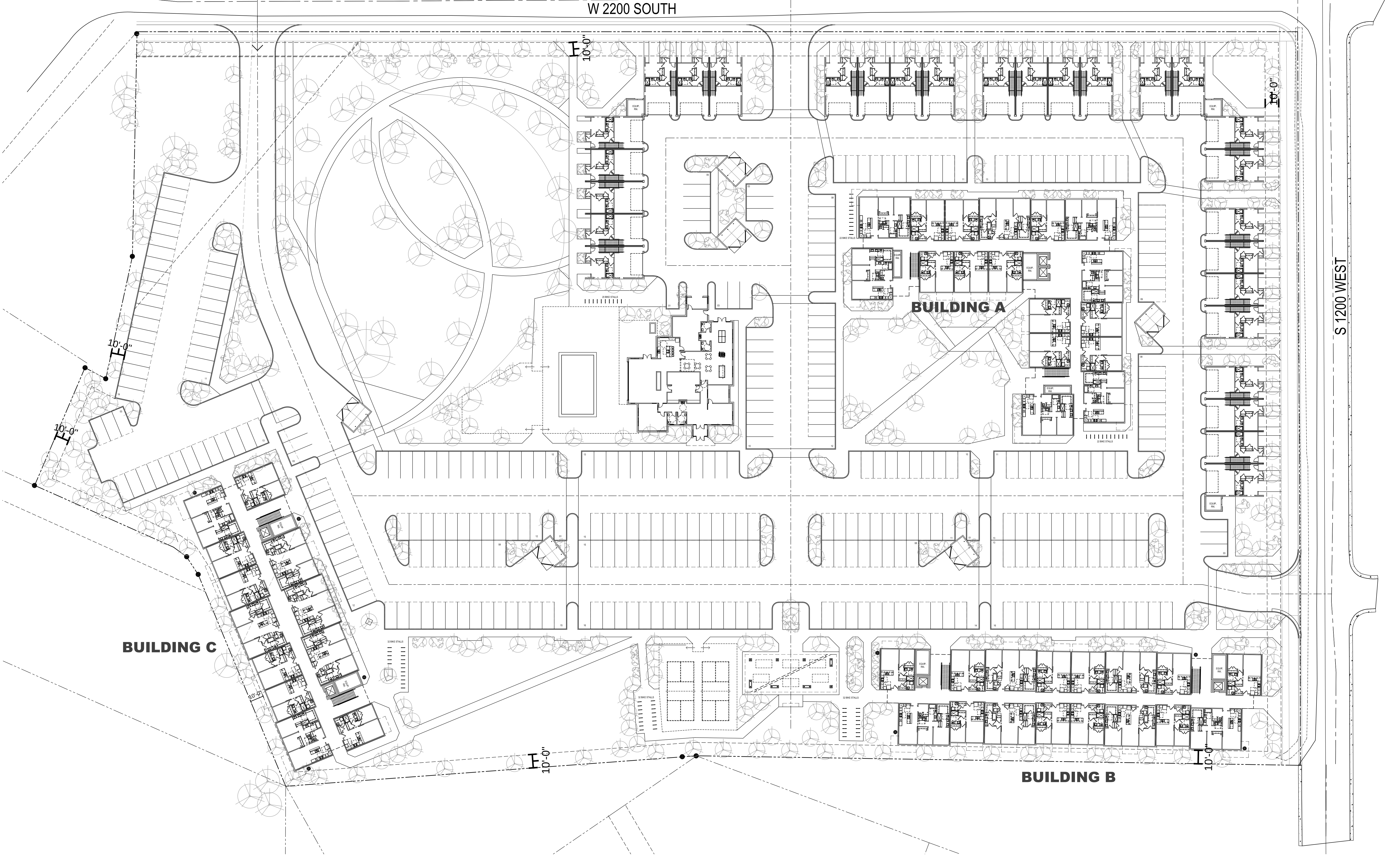
UNIT MATRIX FOR MULTI-FAMILY
- ONE BED UNITS 58% (88 UNITS)
- TWO BED UNITS 42% (64 UNITS)

BUILDING A: 4 story; ~57' to roof peak
BUILDING B: 3 story; ~45' to roof peak
BUILDING C: 3 story; ~45' to roof peak
TOWNHOUSES: 3 story; ~45' to roof peak

EMERGENCY VEHICLE ACCESS
ONLY. (CHAINED AT THE ENTRY)

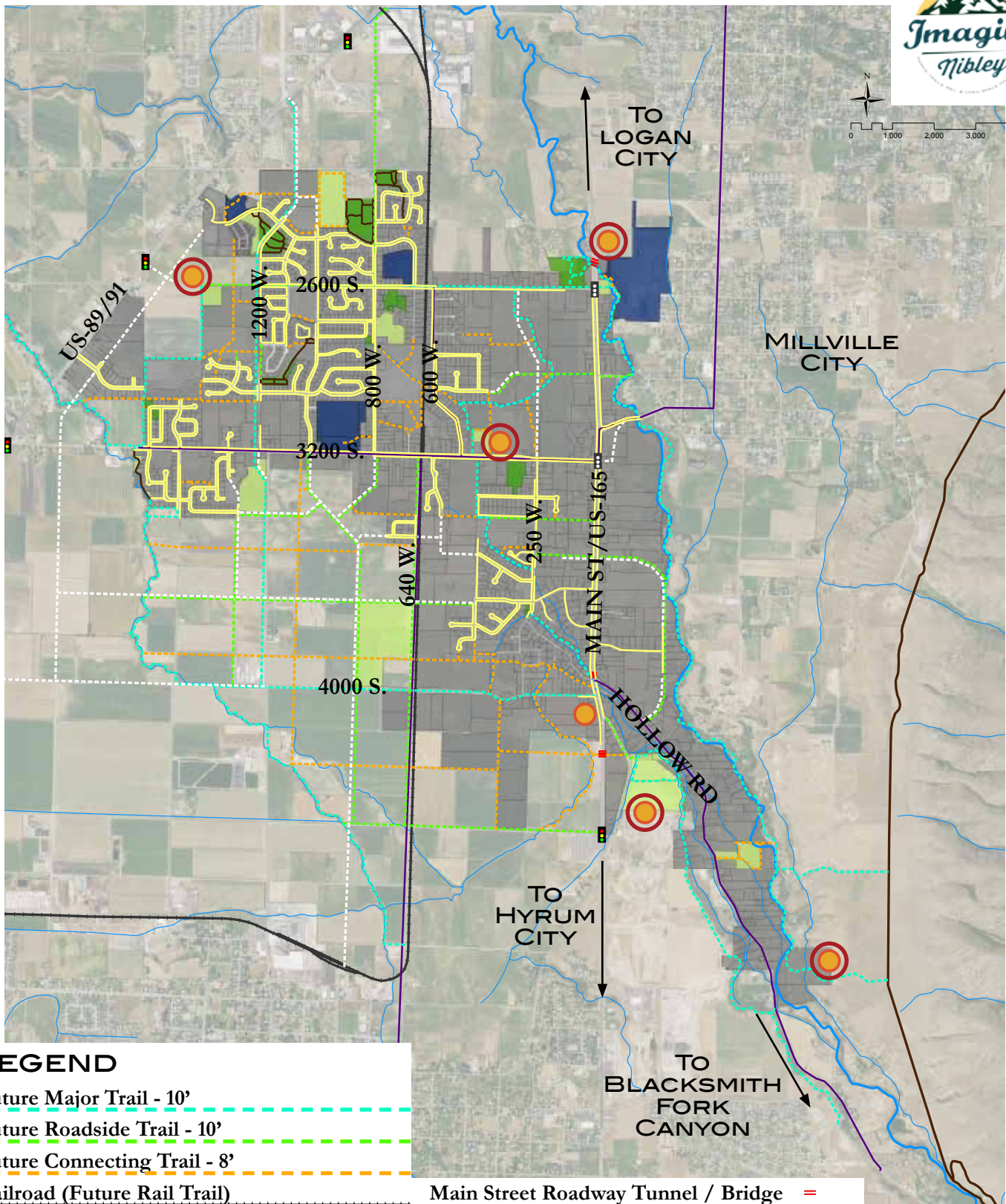
W 2200 SOUTH

S 1200 WEST



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TRAILS MAP



LEGEND

Future Major Trail - 10'

Future Roadside Trail - 10'

Future Connecting Trail - 8'

Railroad (Future Rail Trail)

Future Roads

Existing Shared-Use Roadway

Existing Park Pathway

Existing Sidewalk

Future Trailhead

Existing Trailhead

Main Street Roadway Tunnel / Bridge

Bonneville Shoreline Trail

Blacksmith Fork River

Canal/Stream

Future Park

Existing Park

School



civilsolutionsgroupinc

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Agenda Item #14

Description	Discussion and Consideration: Ordinance 23-28: Amending NCC 19.24.170 Landscaping: Instituting Water Wise Landscaping Requirements (First Reading)
Presenter	Levi Roberts, City Planner
Staff Recommendation	Move to approve Ordinance 23-27— Ordinance 23-28: Amending NCC 19.24.170 Landscaping: Instituting Water Wise Landscaping Requirements, for first reading
Planning Commission Recommendation	Move to approve Ordinance 23-27— Ordinance 23-28: Amending NCC 19.24.170 Landscaping: Instituting Water Wise Landscaping Requirements with the amendment to remove sections (A)(3)(b) and (B)(5) from the draft ordinance.
Reviewed By	Mayor, City Manager, City Planner, City Attorney, Planning Commission

Background:

Utah State SB 118 passed in the 2023 legislative session, provides incentives to install and maintain water efficient landscaping. As part of the bill, the legislature appropriated funding for a turf buy back program, administered by the State Division of Water Resources to install water efficient landscaping to residents who reside in jurisdictions that adopt certain water efficient landscaping standards for new development. The 'Landscape Conversion Incentive Program' eligible participants may receive \$1.50 per square foot of lawn replaced with water wise landscaping. More information about the program can be found here: <https://conservewater.utah.gov/landscape-rebates/> .

The required code provisions for residents to be eligible for the program include the following:

- No lawn on parking strips or areas less than eight feet in width in new residential development.
- No more than 50% of front and side yard landscaped area in new residential developments is lawn. Lawn limitations do not apply to small residential lots with less than 250 square feet of landscaped area.
- In new commercial, industrial, institutional and multi-family development common area landscapes, lawn areas shall not exceed 20% of the total landscaped area, outside of active recreation areas.

This ordinance includes the aforementioned standards and furthermore, Staff recommended the following provisions:

- Provides 2 year timeframe for installing front yard and park strip landscaping within new residential developments.
- Requires landscaping in addition to trees in park strip areas.
- Requires 50% coverage of plant materials at maturity in front yard areas and 20% coverage in park strip areas.

The Planning Commission determined that it would take more research and consideration before adopting the requirement for plant coverage of 50% on front yard areas and 20% in park strips, but recommended to approve the ordinance without these provisions, which would make Nibley City residents eligible for the Turf buy back program and help conserve water as the City grows.

ORDINANCE 23-28

**ORDINANCE 23-28: AMENDING NCC 19.24.170 LANDSCAPING: INSTITUTING WATER WISE
LANDSCAPING REQUIREMENTS**

WHEREAS, Nibley City regulates land use within Nibley City boundaries; and

WHEREAS, Nibley City is supportive of water conservation measures to preserve resources and reduce the need for additional water-related infrastructure; and

WHEREAS, Utah State SB-118 provides incentives to install and maintain water efficient landscaping by adopting certain water efficient landscaping standards which make residents eligible for a State-sponsored Turf buy-back program; and

NOW, THEREFORE, BE IT ORDAINED BY THE NIBLEY CITY COUNCIL OF NIBLEY, UTAH THAT:

1. The attached Nibley City Code 19.24.170 be adopted.
2. All ordinances, resolutions, and policies of the City, or parts thereof, inconsistent herewith, are hereby repealed, but only to the extent of such inconsistency. This repealer shall not be construed as reviving any law, order, resolution, or ordinance, or part thereof.
3. Should any provision, clause, or paragraph of this ordinance or the application thereof to any person or circumstance be declared by a court of competent jurisdiction to be invalid, in whole or in part, such invalidity shall not affect the other provisions or applications of this ordinance or the Nibley City Municipal Code to which these amendments apply. The valid part of any provision, clause, or paragraph of this ordinance shall be given independence from the invalid provisions or applications, and to this end the parts, sections, and subsections of this ordinance, together with the regulations contained therein, are hereby declared to be severable.
4. This ordinance shall become effective upon posting as required by law.

PASSED BY THE NIBLEY CITY COUNCIL THIS 27 DAY OF July, 2023.

Larry Jacobsen, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

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19.24.170 Landscaping

A. Landscaping Requirements:

1. Purpose: The purpose of the landscaping requirements in this section shall be to enhance and create pleasant and attractive surroundings, and contribute to the relief of heat, noise and glare through the proper placement of plants, trees and other supportive materials.
2. Yard Requirements For Residential Zones: At least sixty percent (60%) of the area contained within a required front or side yard adjacent to a street in any residential zone shall be landscaped. Park strip landscaping is required, but shall not count toward the required percentage of landscaping for each property. Landscaping shall be installed no more than two (2) years from the date of Certificate of Occupancy.
3. Scope Of Requirements: Where landscaping is required, such landscaping shall comply with the following requirements:
 - a. Turf grass shall be limited to no more than 50% of front and sideyard landscaped area in new residential developments. Turf grass is not allowed in areas less than eight (8) feet in width. Turf grass limitations do not apply to small residential lots with less than 250 square feet of landscaped area.
 - b. A minimum of fifty percent (50%) coverage of plant materials at maturity using a combination of shrubs, annual plants, perennial plants, ground cover, and/or turf grass within a front and sideyard landscaped area is required. Species, size, and placement of landscape elements may be determined by the property owner.
4. Maintenance: Required landscaped areas shall be maintained in a neat, clean, orderly and healthful condition.

B. Landscaping in Public Street Rights Of Way:

1. Purpose: The purpose of landscaping of public street rights of way is to enhance the beauty of neighborhoods and streets and to reduce the glare, heat and noise reflected from paved roadways.
2. All landscaping taking place in rights-of-way shall comply with NCC 13.12: Nibley City Public Ways and Property-Streetscape of Public Rights-Of-Way code.

4. Turf grass is not allowed in park strips or areas less than eight (8) feet in width in new development. 5. A minimum of twenty percent (20%) coverage of plant materials at maturity using a combination of shrubs, annual plants, perennial plants within the park strip landscaped area is required in conjunction with all new developments. Except for tree spacing noted above, species, size, and placement of landscape elements may be determined by the developer.

C. Commercial, Neighborhood Commercial And Industrial:

1. Percentage Of Gross Area: Landscaping shall be required on twenty percent (20%) of the gross area of a lot or site located in the commercial zone. Landscaping shall be required on ten percent (10%) of the gross area of an industrial zone lot or site. Gross area is interpreted as the total site area remaining after any right of way dedication.
2. Setback: The minimum building and principal use setback from any street right of way shall be twenty feet (20') in commercial zones and fifty feet (50') in industrial zones. Parking shall not be allowed within this minimum setback area. Such areas shall be permanently landscaped except for approved access drives.
3. Tree Ratio: A mixture of evergreen and deciduous trees shall be planted at the ratio of one tree for each three hundred (300) square feet of the net landscape area. Trees shall have a minimum caliper of 1.25 inches. All trees must be planted according to Nibley City Public Works Design Standards. The trees planted in the City's public street rights-of-way or other parts of the development may count toward the total number of trees planted in the City rights-of-way must comply with Nibley City Public Ways and Property Streetscape of Public Rights-Of-Way Code.
4. Adjacent To Residential Zones: All setbacks adjacent to the rear yard or side yard of an existing or proposed residential use shall be permanently landscaped. Setback areas adjacent to residential areas may be increased by the planning commission if, in their opinion, it is necessary to protect the atmosphere and integrity of the residential neighborhood.
5. Irrigation: All landscaped areas shall be provided with an irrigation system, capable of complete coverage of the areas and designed to minimize runoff and other wasting of water. Such system shall be maintained in a fully operational condition. All landscaping shall be maintained in a healthy, neat and orderly condition, free of weeds and litter. All paved areas, walls or fences shall be in good repair without broken parts, holes, potholes or litter.
6. Type Of Landscaping: All landscaped areas may be landscaped with a mixture of ground cover, grass, shrubs or trees, and may include sculptures, patios or fountains.
7. Lawn limitation: In new commercial, industrial, institutional, and multi-family development common area landscapes, turf grass shall not exceed 20% of the total landscaped area, outside of active recreation areas.
8. Plans And Designs For Approval: All landscaping plans and designs shall be submitted to the planning commission with other required plot plans for approval.
9. Screening Requirements: Where landscaped screening is required for other than residential use, said screening shall consist of evergreen shrubs, closely spaced and maintained at substantially the specified height of said required screening. When not otherwise specified, natural screening shall be maintained at a height of from four feet (4') to seven feet (7').

10. Plot Plan Required: Where landscaping is required for other than residential uses, a plot plan showing the proposed landscape development, plant materials, watering system and use of the property shall be submitted to the planning commission. The same plot plan used to show parking layout or other requirements for the issuance of a building permit may be used to show landscaping, providing all proposed landscaping is detailed adequately on said plot plan. The planning commission may disapprove such plans if they determine that they are not consistent with the requirements and purposes of this title.
11. Conflicting Provisions: If requirements of this section are in conflict with other requirements of this title, the provisions of this section shall apply.
12. The City may deny occupancy or conditional use permits to any commercial or industrial development that does not comply with this chapter.

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Agenda Item #15

Description	Discussion & Consideration: Ordinance 23-27— Amending NCC 19.20.010 Land Use Chart and 19.04.010 Definitions and adopting NCC 19.20.030 Mixed Use and NCC 19.24.270 Mobile Businesses and Food Trucks (Second Reading)
Presenter	Levi Roberts, City Planner
Staff & Planning Commission Recommendation	Move to approve Ordinance 23-27— Amending NCC 19.20.010 Land Use Chart and 19.04.010 Definitions and adopting NCC 19.20.030 Mixed Use and NCC 19.24.270 Mobile Businesses and Food Trucks
Reviewed By	Mayor, City Manager, City Planner, City Attorney, Planning Commission

Background:

One of the Planning Commission goals for 2023 is to review and update the land use chart, which designates permitted, conditional and not permitted uses in each Nibley City zone. The Planning Commission has reviewed and discussed each use listed in the land use chart in a series of workshops to draft appropriate modifications in support of the purposes of each zone and the General Plan. In preparation for the discussion, individual Planning Commissioners reviewed the land-use chart and provided input regarding the appropriate designation for each use by zone. Staff then facilitated a discussion to review, redesignate, and add uses to the chart, as applicable. Several amendments to the Land Use Chart and some of the associated definitions are recommended, based upon this discussion. Recommended changes to the ordinance include the following:

- Removing residential uses from commercial and industrial zones as conditional uses, with the exception of the town center area if part of a mixed-use project. In such areas residential development of up to 10 units/acre is allowed if part of a mixed-use project.
- Consolidating Nursing home and assisted living center designation
- Adding 'Catering/Commercial kitchen' and 'Meal preparation & assembly' to the chart of allowed uses in several zones. These are emerging uses that there has been interest in establishing.
- Remove temporary vendor/food trucks from chart. Replace with Food trucks/mobile business section in compliance with recent state code changes.
 - Food trucks/mobile businesses can operate within same zones as same permanent uses. Business license required if not obtained in other jurisdiction.

- Must submit site plan if operating for longer than 10 hours per week.
- Removing the following designations from the chart which were deemed to be unnecessary: home office (covered by home occupation) and building moved from another site
- Changing the following additional Not permitted uses to Conditional or Permitted:
 - Bed and Breakfast Inn within R-2 and R-2A zones
 - Group Living Facility in C and C-N Zones
 - Home Occupation in C, C-N and I Zones
 - Farmers' Market in R-1A zones
 - Bus/Transit Terminal in R-M zones
 - College/University in C-N zones
 - Hospital in C-N zones
 - Construction Sales & Service in A and C-N zones
 - Low Power Radio Service/Cell Tower in A zones
 - General Repair Service in A zones
 - Light Manufacturing in C zones
 - Sports Facilities in A zones
 - Commercial Daycare/Preschool in P/S zones
- Changing the following additional Conditional or Permitted Uses to Not Permitted
 - Assisted Living Facility/ Nursing Home in A and R-E zones
 - Short-Term Rentals in I zones
 - ADU in I or P/S zones
 - Garden Center/Nursery in R-M zones
 - Funeral Home in R-M zones
 - Liquor Store in R-M zones
 - Corporate Office in A zones
- Changing the following Permitted Uses to Conditional
 - Assisted Living Facility/Nursing Home in R-M zones
 - Bed and Breakfast Inn in R-M zones
 - Garden Center/Nursery in C-N zones
 - Veterinary Clinic in A zones
 - Cemetery in P/S zones
 - Government Services in A zones
 - Beauty Salon in R-M zones

ORDINANCE 23-27

**AMENDING NCC 19.20.010 LAND USE CHART AND 19.04.010 DEFINITIONS AND ADOPTING
NCC 19.20.030 MIXED USE AND NCC 19.24.270 MOBILE BUSINESSES AND FOOD TRUCKS**

WHEREAS, Nibley City regulates land use within Nibley City boundaries; and

WHEREAS, Certain uses are compatible within certain zoning districts while others are incompatible; and

WHEREAS, Nibley City Moderate Income Housing Plan provides that the City should allow for apartments and condominiums within Neighborhood Commercial Zones attached to commercial buildings in the Town Center Area; and

WHEREAS, UCA 11-56 provides regulations for mobile businesses and food trucks.

NOW, THEREFORE, BE IT ORDAINED BY THE NIBLEY CITY COUNCIL OF NIBLEY, UTAH THAT:

1. The attached Nibley City Code 19.20.030 and 19.24.270 be adopted and amendments to Nibley City Code 19.20.010, 19.04.010 be adopted.
2. All ordinances, resolutions, and policies of the City, or parts thereof, inconsistent herewith, are hereby repealed, but only to the extent of such inconsistency. This repealer shall not be construed as reviving any law, order, resolution, or ordinance, or part thereof.
3. Should any provision, clause, or paragraph of this ordinance or the application thereof to any person or circumstance be declared by a court of competent jurisdiction to be invalid, in whole or in part, such invalidity shall not affect the other provisions or applications of this ordinance or the Nibley City Municipal Code to which these amendments apply. The valid part of any provision, clause, or paragraph of this ordinance shall be given independence from the invalid provisions or applications, and to this end the parts, sections, and subsections of this ordinance, together with the regulations contained therein, are hereby declared to be severable.
4. This ordinance shall become effective upon posting as required by law.

PASSED BY THE NIBLEY CITY COUNCIL THIS 13 DAY OF July, 2023.

Larry Jacobsen, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

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19.20.010 Classification Of New And Unlisted Uses

For those uses not listed or described in the following chart as a permitted or conditional use, the applicant may petition the city council to amend the zoning title to specify and locate an appropriate zone or zones for the new use.

19.20.020 Land Use Chart

Nibley City Land Use Chart

Key

P:	Permitted Use
NP:	Not Permitted Use
C:	Conditional use
A:	Agriculture Zone
R-E:	Rural Estate Zone
R-1:	Residential Zone R-1
R-1A:	Residential Zone R-1A
R-2:	Residential Zone R-2
R-2A:	Residential Zone R-2A
R-M:	Mixed Residential Zone

P/S:	Park/School
C:	Commercial Zone
C-N:	Neighborhood Commercial Zone
I:	Industrial Zone

Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Residential											
Assisted Living Facility / Nursing Home	NP	NP	NP	NP	NP	NP	C	NP	C	C	NP
Artisan Shop	C	C	C	C	C	C	C	NP	C	C	C
Bed and Breakfast Inn	C	C	C	C	C	C	C	NP	C	C	NP
Group Living Facility ¹	C	C	C	C	C	C	C	NP	C	C	NP
Home Occupation	C	C	C	C	C	C	C	NP	C	C	C

Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Church/Places of Worship	C	C	C	C	C	C	C	C	C	C	C
Club/Service Organization/Lodge	NP	NP	NP	NP	NP	NP	C	C	C	NP	C
College/University	C	NP	NP	NP	NP	NP	C	P	C	C	C
Government Services	C	NP	NP	NP	NP	NP	P	P	P	NP	P
Hospital	NP	NP	NP	NP	NP	NP	C	NP	C	C	C
Public Park	P	P	P	P	P	P	P	P	P	P	P
Private Park	P	P	P	P	P	P	P	P	P	P	P
Utility Substation	C	C	C	C	C	C	C	C	C	C	C
School	C	C	C	C	C	C	C	P	P	C	P
Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Commercial											
Auditorium	NP	NP	NP	NP	NP	NP	C	P	C	C	C

Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Bail Bonds/Pawnbroker	NP	NP	NP	NP	NP	NP	NP	NP	C	NP	C
Bakery	NP	NP	NP	NP	NP	NP	P	NP	P	P	P
Banks/Financial Institutions	NP	NP	NP	NP	NP	NP	P	NP	P	P	P
Beauty Salon/Spa	NP	NP	NP	NP	NP	NP	C	NP	P	P	P
Business Equipment Sales and Service	NP	NP	NP	NP	NP	NP	C	NP	C	C	C
Car Wash	NP	NP	NP	NP	NP	NP	NP	NP	P	P	P
Catering/Commercial Kitchen	C	C	C	C	C	C	C	NP	C	C	C
Check Cashing/Credit Services	NP	NP	NP	NP	NP	NP	NP	NP	C	NP	C
Construction Sales and Service	C	NP	NP	NP	NP	NP	NP	NP	C	C	C
Daycare/Preschool, Commercial	NP	NP	NP	NP	NP	NP	P	P	P	P	P
Funeral Home	NP	NP	NP	NP	NP	NP	NP	NP	P	P	P
Gasoline Service Station	NP	NP	NP	NP	NP	NP	C	NP	P	P	P

Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Gasoline, Wholesale	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Hotel/Motel	NP	NP	NP	NP	NP	NP	C	NP	C	C	C
Laundry Service	NP	NP	NP	NP	NP	NP	C	NP	C	C	C
Liquor Store	NP	NP	NP	NP	NP	NP	NP	NP	C	NP	C
Low Power Radio Service/Cell Tower	C	NP	NP	NP	NP	NP	C	NP	C	NP	C
Medical/Dental Offices and Clinic	NP	NP	NP	NP	NP	NP	P	NP	P	P	P
Medical Sales and Service	NP	NP	NP	NP	NP	NP	P	NP	P	P	P
Personal Instruction Services	C	C	C	C	C	C	C	C	C	C	C
Motor Vehicle Sales and Service	NP	NP	NP	NP	NP	NP	NP	NP	C	C	C
Office, Corporate	NP	NP	NP	NP	NP	NP	C	NP	C	C	C
Offices, Professional	NP	NP	NP	NP	NP	NP	P	NP	P	P	P
Parking, Commercial	NP	NP	NP	NP	NP	NP	NP	NP	C	NP	C
Plumbing Services	NP	NP	NP	NP	NP	NP	C	NP	P	C	P

[illegible]

Use	A	R-E	R-1	R-1A	R-2	R-2A	R-M	P/S	C	C-N	I
Junk/Salvage Yard	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Manufacturing, Heavy	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Manufacturing, Industrial	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Manufacturing, Light	NP	NP	NP	NP	NP	NP	NP	NP	C	NP	C
Mineral Extraction	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Pest Control	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Recycling Collection Facility	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Sign Shop	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Sports Facilities	C	NP	NP	NP	NP	NP	C	C	C	NP	C
Storage Facility	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Warehousing	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Warehousing, Residential Storage	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C
Welding/Machine Shop	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	C

Notes

1. Group living facilities are governed by NCC 19.42
2. Any land use not listed is not permitted
3. Accessory dwelling units are governed by NCC 19.24.250
4. Short-term rental housing is governed by NCC 19.24.260
5. For Two-family housing, one of the units shall be owner-occupied, except for bona fide temporary absences
6. Housing is only allowed within the Town Center Area as described in NCC 19.32.030(B), in Neighborhood Commercial and Commercial areas within a mixed-use residential/commercial project, as described in NCC 19.20.030.

19.20.030 Mixed Use

- A. Any mix of permitted or conditional uses listed in this section is allowed within the same lot or parcel, whether within the same building or in a permitted accessory building, provided that all setbacks and other applicable standards of this Title are adhered to for each use. Buildings containing mixed uses shall comply with the most restrictive standard among the standards applicable to the uses within the building.
- B. Within the Town Center Area, as described in NCC 19.32.030(B), housing is allowed within Commercial and Neighborhood Commercial Zones when attached to a commercial building. Within such developments, at least 50% of land must be dedicated to commercial uses. The 50% use may include the entirety of the ground floor area of buildings with commercial uses on the ground floor or horizontally separated uses where commercial uses occupy an entire building. For buildings with partial commercial uses on a floor or vertically separated uses, only the ground floor area of the portion dedicated to commercial uses may be counted. The portion of land that is apportioned as a commercial use shall include the ground floor area of commercial uses, as described above, and supportive uses, including parking and landscaping. Parking for a mixed-use building that is required for residential uses shall not be included as part of the land apportioned as commercial use. The maximum residential density shall be ten (10) units per net developable acre with additional density allowable through transfer of development rights as described in NCC 19.48. The residential density shall be calculated based upon the area that is dedicated to residential uses, including any mixed-use buildings.

19.04.010 Definitions

CATERING/COMMERCIAL KITCHEN: A business with a kitchen that has durable equipment designed for mass food production which provides food wholly or in part owned by the caterer for a specific event at a location other than the food establishment, on a contractual, prearranged basis to a subset of the public.

FOOD TRUCK: A food truck, as defined by state law (11-56-102). Food trucks shall be permitted in any zone in which restaurants are permitted, subject to the regulations for food trucks and mobile businesses under NCC X.

MEAL PREPARATION & ASSEMBLY: A business which prepares and assembles individual meals to deliver to individuals and families, but not larger groups. This includes preparing, packaging and freezing such individual meals. This does not include large scale packaged food assembly.

MOBILE BUSINESS: An enclosed mobile business, as defined by state law (11-56-102).

PERSONAL INSTRUCTION SERVICES: A business which trains individuals or groups in the arts, personal defense, crafts or other subjects of a similar nature.

19.24.270 Mobile Businesses and Food Trucks.

A. Location.

1. Mobile businesses are permitted in any zone in which a similar, non-mobile use is listed as a conditional or permitted use, and food trucks are permitted in any zone in which restaurants are listed as a permitted or conditional use, subject to the regulations set forth in this section. A conditional use permit is not required for mobile businesses and food trucks. Mobile businesses and food trucks are not permitted to operate open to the public in any other zone.
2. Mobile businesses and food trucks are not permitted to operate or store their vehicles upon any public right-of-way.
3. Mobile businesses and food trucks shall be required to provide a site plan showing culinary water facilities and connections, wastewater facilities, connections and management, parking, access, and other details required for site plans for similar uses if the mobile business or food truck operates on the same private lot or parcel for ten (10) hours or more per week.

B. Licensure and Approval.

1. A mobile business or food truck shall obtain, for each truck, a business license from the city if the operator does not hold a current business license from another political subdivision in Utah. A mobile business or food truck may operate without a business license at events on private property that are not open to the public.

2. A mobile business or food truck shall obtain or provide proof of a current health department permit, if required for the business.
 3. A mobile business or food truck shall obtain or provide proof of passing a fire safety inspection, if required for the business.
- C. Nothing herein waives any requirement regarding special event or mass gathering permits.

Nibley City Council

JULY 13, 2023

Land Use Chart Amendments

Background

- Planning Commission Goal for 2023: Review and Update Land Use Chart
- Draft incorporates input from several Planning Commission workshops.
- Focus on aligning better with goals of General Plan, including improving compatibility of land uses
- Includes provisions for mixed use, to implement moderate income housing plan, and for food trucks/mobile businesses to become compliant with State Code.

Land Use Chart Amendments

Summary of Changes

- Remove residential uses from commercial and industrial zones as conditional uses with exception of town center area if part of mixed-use project (Commercial & Neighborhood Commercial).
- Added mixed-use section to clarify mixing uses on the same lot or parcel (allowed with most restrictive standard)
 - Includes standards for mixed-use within neighborhood commercial and commercial areas in town center area in support of moderate-income housing plan.
 - Must include 50% of ground area as commercial, may be up to 10 units/acre
- Added 'Catering/commercial kitchen' and 'Meal preparation & assembly' with definitions
- Remove temporary vendor/food trucks from chart. Replace with Food trucks/mobile business section in compliance with recent state code changes.
 - Food trucks/mobile businesses can operate within same zones as same permanent uses. Business license required if not obtained in other jurisdiction.
 - Must submit site plan if operating for longer than 10 hours per week.



Land Use Chart Amendments

Other modifications

Change from Not permitted to Conditional/Permitted

- Bed and Breakfast Inn within R-2 and R-2A zones
- Group Living Facility in C and C-N Zones
- Home Occupation in C, C-N and I Zones
- Farmers' Market in R-1A zones
- Bus/Transit Terminal in R-M zones
- College/University in C-N zones
- Hospital in C-N zones
- Construction Sales & Service in A and C-N zones
- Low Power Radio Service/Cell Tower in A zones
- General Repair Service in A zones
- Light Manufacturing in C zones
- Sports Facilities in A zones
- Commercial Daycare/Preschool in P/S zones

Change from Conditional/Permitted to NP

- Assisted Living Facility/ Nursing Home in A and R-E zones
- Short-Term Rentals in I zones
- ADU in I or P/S zones
- Garden Center/Nursery in R-M zones
- Funeral Home in R-M zones
- Liquor Store in R-M zones
- Corporate Office in A zones

Land Use Chart Amendments

Other modifications

Change Permitted to Conditional

- Assisted Living Facility/Nursing Home in R-M zones
- Bed and Breakfast Inn in R-M zones
- Garden Center/Nursery in C-N zones
- Veterinary Clinic in A zones
- Cemetery in P/S zones
- Government Services in A zones
- Beauty Salon in R-M zones

Staff & Planning Commission Recommendation

Approval of Ordinance 23-27- Amending NCC 19.20.010 Land Use Chart and 19.04.010 Definitions and adopting NCC 19.20.030 Mixed Use and NCC 19.24.270 Mobile Businesses and Food Trucks