



NIBLEY CITY COUNCIL AGENDA
THURSDAY, AUGUST 27, 2026 – 6:30 PM MT

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 W 3200 S, NIBLEY, UT 84321-6337. The public may also view the meeting via the YouTube link provided at www.nibleycity.gov. Public comment should be submitted to cherylb@nibleycity.gov by 6:30 PM. Public comments with names and addresses will be read into the public record.

1. Opening Ceremonies (Councilmember Spaulding)
2. Call to Order and Roll Call (Chair)
3. Approval of the August 6, 2026, Meeting Minutes and the Current Agenda (Chair)
4. Public Comment Period¹ (Chair)
5. Planning and Zoning Commission Report
6. Staff Reports
7. **Discussion:** Update on Nibley Morgan Farm
8. **Discussion:** Update on 2600 South Sidewalk
9. **Discussion and Consideration:** Ordinance 26-08—Substituting NCC 5.08 Residential Solicitation (Second Reading)
10. **Discussion and Consideration:** Ordinance 26-11—Development Agreement for the 4150 Hollow Road Subdivision, a 2-Lot Standard Subdivision, Setting Forth Terms and Conditions for the Development, Including Exceptions to Nibley City Code 21.12.050(D) Curb, Gutter and Sidewalks (Second Reading)
11. **Discussion and Consideration:** Ordinance 26-13—Amending NCC 19.24.150 Permitted Signs, Including Provisions Related to Political and Temporary Signage, Setbacks and Permit Requirements (First Reading)
12. **Discussion and Consideration:** Ordinance 26-12—Adopting NCC 19.50 Expiration of Inactive Applications (First Reading)
13. **Council Reports**

Adjourn

Nibley City's next scheduled City Council meeting will be on Thursday, September 17, 2026, at 6:30 PM MT.

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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**Nibley City Council
Agenda Report for
August 27, 2026**

Agenda Item #7

Description	Discussion: Update on Nibley Morgan Farm
Presenter	Mike and Roxie Christensen
Staff Recommendation	
Reviewed By	Larry Jacobsen, Mayor Justin Maughan, Nibley City Manager

Background:

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Agenda Item #8

Description	Discussion: Update on 2600 South Sidewalk
Presenter	Tom Dickinson, City Engineer
Staff Recommendation	
Reviewed By	Larry Jacobsen, Mayor Justin Maughan, Nibley City Manager Tom Dickinson, Nibley City Engineer

Background:

Tom will give an update on the status of the project and how it went throughout construction.

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Agenda Item #9

Description	Discussion and Consideration: Ordinance 26-08—Substituting NCC 5.08 Residential Solicitation (Second Reading)
Presenter	Talon Bigelow, Assistant City Recorder
Staff Recommendation	Move to approve Ordinance 26-08—Substituting NCC 5.08 Residential Solicitation
Reviewed By	Larry Jacobsen, Mayor Justin Maughan, City Manager Talon Bigelow, Assistant City Recorder Mohamed Abdullahi, City Attorney

Additional Background Since 6-25-26:

The staff has made some minor edits to shorten and clarify certain sections Edits are highlighted throughout the attached document. The City Attorney has also reviewed the substitution with no major changes or suggestions.

Background:

Following the presentation with City Council concerning residential solicitation, staff has drafted an ordinance that would substitute Chapter 5, Section 8 of Nibley City Code (i.e. completely rewrite NCC 5.08 title and body). This ordinance comes in response to calls from residents sharing thoughts on the lack of prohibitions found in current city code pertaining to residential solicitation.

The City Council directed staff to draft an ordinance that would place reasonable restrictions and regulations on commercial solicitation in residential areas while allowing for good will check-ins by neighbors, the sharing of religious beliefs, and political activism. The ordinance is written in such a way as not to burden staff with specific procedures as technologies and policies update quickly. This code is meant to protect the citizens from unwanted solicitation while setting up a healthy framework for those who perform door-to-door solicitation.

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ORDINANCE 26-08

SUBSTITUTING NCC 5.08 RESIDENTIAL SOLICITATION

WHEREAS, residents of Nibley City have an inalienable interest in their personal safety, well-being, and privacy in their residences, as well as their ability to provide or receive information regarding matters of personal belief, political, or charitable activities, and goods and services lawfully in commerce; and

WHEREAS, commercial residential solicitation generally represents a greater intrusion upon residential privacy than political, religious, or other noncommercial door-to-door solicitation involving the dissemination of ideas; and

WHEREAS, a number of city residents do not desire to listen to or otherwise receive commercial solicitations. Additionally, some residents are particularly vulnerable to consumer fraud and unfair consumer sales practices by commercial residential solicitors; and

WHEREAS, Nibley City finds the procedures, rules, and regulations set forth in the substitution of Nibley City Code 5.08 are narrowly tailored to preserve and protect the interests of our citizenry while at the same time balancing the rights of those regulated.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF NIBLEY CITY, CACHE COUNTY, STATE OF UTAH, AS FOLLOWS:

1. The attached substitution to Nibley City Code 5.08 be adopted.
2. All ordinances, resolutions, and policies of Nibley 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, paragraph, or chapter 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.

PASSED, ADOPTED, AND MADE EFFECTIVE BY THE CITY COUNCIL OF NIBLEY CITY, UTAH, THIS 16 DAY OF JULY 2026.

Larry Jacobsen, Mayor

ATTEST:

Cheryl Bodily, City Recorder

5.08 Residential Solicitation

5.08.010 Definitions

For the purposes of this Chapter, the following definitions shall apply:

- A. “Advocating” means speech or conduct intended to inform, promote, or support Religious Belief, Political Position, or Charitable Activities.
- B. “Appellant” means the person or entity appealing the denial or suspension of a Certificate, either personally as an Applicant or Registered Solicitor, or on behalf of the Applicant or Registered Solicitor.
- C. “Applicant” means an individual who is at least sixteen (16) years of age and not a corporation, partnership, limited liability company, or other lawful entity who applies for a Certificate permitting Door-to-Door Solicitation.
- D. “Application Form” means a standardized paper or electronic form provided by the City to an Applicant to be completed and submitted as a part of Registration.
- E. “BCI” means an original or copy, dated no later than one hundred eighty (180) days prior to the date of the Application, of either:
 - 1. A verified criminal history report for the Applicant from the Utah Department of Public Safety Bureau of Criminal Identification; or
 - 2. Verification by the Utah Department of Public Safety Bureau of Criminal Identification that no criminal history rising to the level of a Disqualifying Status exists for the Applicant.
- F. “Business” means a commercial enterprise licensed by the City as a person or Entity under this Title, having a fixed or temporary physical location within the City.
- G. “Certificate” means a Certificate permitting Door-to-Door Solicitation in the City, applied for or issued pursuant to the terms of this Chapter. All Certificates issued pursuant to this Chapter shall have an active term of six (6) months.
- H. “Charitable Activities” means Advocating by persons or Entities that either are, or support, a Charitable Organization.
- I. “Charitable Organization” includes any person, joint venture, partnership, limited liability company, corporation, association, group, or other Entity;
 - 1. That is:
 - i. A benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious, social welfare or advocacy, public health, environmental or conservation, or civic organization;
 - ii. For the benefit of a public safety, law enforcement, or firefighter fraternal association; or
 - iii. Established for any charitable purpose; and
 - 2. That is tax exempt under applicable provisions of the Internal Revenue Code of 1986 as amended, and qualified to solicit and receive tax deductible contributions from the public for charitable purposes.
 - 3. Charitable Organization includes a chapter, branch, area, or office, similar affiliate, or any person soliciting contributions within the state for a Charitable Organization that has its principal place of business outside the City or State of Utah.

- J. "Competent Individual" means a person claiming or appearing to be at least eighteen (18) years of age and of sufficiently sound mind and body to be able to engage in rational thought, conversation, and conduct.
- K. "Completed Application" means a fully completed Application Form, a BCI, two copies of the original identification relied on by the Applicant to establish Proof of Identity, and the tendering of Fees.
- L. "Criminally Convicted" means the final entry of a conviction, whether by a plea of no contest, guilty, entry of a judicial or jury finding guilt, which has not been set aside on appeal or pursuant to a writ of habeas corpus. The criminal conviction is that offense of which the Applicant or Registered Solicitor was convicted, without regard to the reduced status of the charge after completion of conditions of probation or parole, and charges dismissed under a plea in abeyance or diversion agreement.
- M. "Disqualifying Status" means anything specifically defined in this Chapter as requiring the denial or suspension of a Certificate, and any of the following:
 - 1. The Applicant or Registered Solicitor has been Criminally Convicted or has criminal charges currently pending for: (i) felony homicide, (ii) sexual assault of any kind, (iii) the sale or distribution of controlled substances, (iv) physically abusing, sexually abusing, or exploiting a minor, or (v) theft of property;
 - 2. The Applicant or Registered Solicitor has been Criminally Convicted of a felony within the last ten (10) years;
 - 3. The Applicant or Registered Solicitor has been incarcerated in a federal or state prison within the past five (5) years;
 - 4. The Applicant or Registered Solicitor has been Criminally Convicted of a misdemeanor within the past five (5) years involving a crime of: (i) moral turpitude, or (ii) violent or aggravated conduct involving persons or property.
 - 5. A Final Civil Judgment has been entered against the Applicant or Registered Solicitor within the last five (5) years indicating that: (i) the Applicant or Registered Solicitor has either engaged in fraud, or intentional misrepresentation, or (ii) that a debt of the Applicant or Registered Solicitor was non-dischargeable in bankruptcy;
 - 6. The Applicant or Registered Solicitor is currently on parole or probation to any court, penal institution, or governmental entity, including being under house arrest or subject to a tracking device;
 - 7. The Applicant or Registered Solicitor has an outstanding arrest warrant from any jurisdiction; or
 - 8. The Applicant or Registered Solicitor is currently subject to a protective order based on physical or sexual abuse issued by a court of competent jurisdiction.
- N. "Door-to-Door Solicitation" means the practice of engaging in or attempting to engage in conversation with any person at a Residence or dwelling, whether or not that person is a Competent Individual, while making or seeking to make or facilitate a Home Solicitation Sale, or attempting to further the sale of Goods and/or Services.
- O. "Entity" includes a corporation, partnership, limited liability company, or other lawful entity, organization, society, or association.
- P. "Fees" means the cost charged to the Applicant or Registered Solicitor for the issuance of a Certificate and/or Identification Badge as enumerated on the currently adopted Consolidated Fee Schedule.

- Q. “Final Civil Judgment” means a civil judgment that would be recognized under state law as a judgment to which collateral estoppel would apply.
- R. “Goods” means one or more tangible items, wares, objects of merchandise, perishables of any kind, subscriptions, or manufactured products offered, provided, or sold.
- S. “Home Solicitation Sale” means to make or attempt to make a Sale of Goods or Services by a Solicitor at a Residence by means of Door-to-Door Solicitation, regardless of the means of payment or consideration used for the purchase or the time of delivery of the Goods or Services.
- T. “Licensing Officer” means the City employee(s) or agent(s) responsible for receiving from an Applicant or Registered Solicitor the Completed Application and either granting, suspending, or denying the Applicant’s Certificate.
- U. “No Solicitation Sign” means a reasonably visible and legible sign that states “No Soliciting”, “No Solicitors”, “No Salespersons”, “No Trespassing”, or words of similar import.
- V. “Political Position” means any actually held belief, or information for, against, or in conjunction with any political, social, environmental, or humanitarian belief or practice.
- W. “Registered Solicitor” means any person who has been issued a current Certificate by the City.
- X. “Registration” means the process used by the City Licensing Officer to accept a Completed Application and determine whether or not a Certificate will be denied, granted, or suspended.
- Y. “Religious Belief” means any sincerely held belief, or information for, against, or in conjunction with, any theistic, agnostic, or atheistic assumption, presumption or position, or religious doctrine, dogma, or practice regardless of whether or not the belief or information is endorsed by any other person or public or private entity.
- Z. “Residence” means any living unit contained within any building or structure that is occupied by any person as a dwelling consistent with the zoning laws of the City, together with the lot or other real property on which the living unit is located. This does not include the sidewalk, public street, or rights of way.
- AA. “Responsible Person or Entity” means that person or Entity responsible for providing the following to an Applicant, Registered Solicitor, and the Competent Individual in a Residence to whom a Sale of Goods or Services is made or attempted to be made by means of a Home Solicitation Sale:
 - 1. Maintaining a state sales tax number, computing the sales taxes owing from any Sale of Goods or Services, paying the sales taxes, and filing any required returns or reports;
 - 2. Facilitating and responding to requests from consumers who desire to cancel the sale pursuant to applicable contractual rights or law; and
 - 3. Refunding any monies paid or reversing credit card charges to those persons who timely rescind any sale pursuant to applicable contractual rights or law.
- BB. “Sale of Goods or Services” means the conduct and agreement of a Solicitor and the Competent Individual in a Residence regarding a particular Good(s) or Service(s) that entitles the consumer to rescind the same within three days under any applicable federal, state, or local law.
- CC. “Services” means those intangible goods or personal benefits offered, provided, or sold to a Competent Individual of a Residence.

- DD. “Soliciting” or “Solicit” or “Solicitation” means any of the following activities:
1. Seeking to obtain Sales or orders for the exchange of goods, wares, merchandise, or perishables of any kind, for any kind of remuneration or consideration, regardless of whether advance payment is sought;
 2. Seeking to obtain prospective customers to apply for or to purchase insurance, subscriptions to publications, or publications;
 3. Seeking to obtain contributions of money or any other thing of value for the benefit of any person or Entity;
 4. Seeking prospective customers for Goods or Services;
 5. Seeking to engage an individual in conversation at a Residence for the purpose of promoting or facilitating the receipt of information regarding Religious Belief, Political Position, Charitable Conduct, or a Home Solicitation Sale;
 6. Other activities falling within the commonly accepted definition of Soliciting, such as hawking or peddling.
- EE. “Solicitor” or “Solicitors” means a person(s) engaged in Door-to-Door Solicitation.
- FF. “Submitted in Writing” means the information for an appeal of a denial or suspension of a Certificate, submitted in any type of written statement to the City offices by mail or hand delivery.
- GG. “Substantiated Report” means an oral, written, or electronic report:
1. That is submitted to and documented by the City by a Competent Individual who is willing to provide law enforcement or other City employee(s) with publicly available identification of their name, address, and any other reliable means of contact or any other regularly established law enforcement agency at any level of government.
 2. That provides any of the following information regarding a Registered Solicitor:
 - i. Documented verification of a previously undisclosed Disqualifying Status of a Registered Solicitor;
 - ii. Probable cause that the Registered Solicitor has committed a Disqualifying Status which has not been determined to be a Disqualifying Status;
 - iii. Documented, eye-witness accounts that the Registered Solicitor has engaged in repeated patterns of behavior that demonstrate failure by the Registered Solicitor to adhere to the requirements of this Chapter; or
 - iv. Probable cause that continued licensing of the Registered Solicitor creates exigent circumstances that threaten the health, safety, or welfare of any individuals or entities within the City.
- HH. “Waiver” means the printed or electronic form provided to the Applicant by the City wherein the Applicant agrees that the City may obtain a name/date of birth BCI background check on the Applicant for licensing purposes under this Chapter.

5.08.020 Exemptions from Chapter

Individuals that qualify for exemption under this Chapter need not Register as required by this Chapter. Those Persons exempt from Registration are exempt from the duties and prohibitions outlined in this Chapter while Advocating or Soliciting. The following are exempt from Registration under this Chapter:

- A. Persons specifically invited to a Residence by a Competent Individual prior to the time of the person’s arrival at the Residence or dwelling. An invited solicitation shall not include

the circumstance in which the resident invites back a solicitor who initiated contact with the resident at the residence. A resident's failure to post a "No Soliciting" sign or placard or like notice may not be construed as an invitation to solicitation by such resident, or as an expression of such resident's desire to hear or receive solicitations;

- B. Persons delivering goods to a Residence pursuant to a previously made order, or persons providing Services at a Residence pursuant to a previously made request by a Competent Individual;
- C. Persons performing noncommercial, neighborly acts of kindness, including but not limited to, mowing lawns, mending fences, providing meals, and rendering aid;
- D. Persons advocating or disseminating information for, against, or in conjunction with, any Religious Belief, or Political Position regardless of whether Goods, Services, or any other consideration is offered or given, with or without any form of commitment, contribution, donation, pledge, or purchase; and
- E. Solicitation on behalf of a charitable organization as defined by Utah Code Annotated §13-22, or an organization listed in Utah Code Annotated §13-22. This charitable exemption shall apply to students soliciting contributions to finance extracurricular social, athletic, artistic, scientific, or cultural programs, provided the Solicitation has been approved by the school administration.

5.08.030 Unlicensed Solicitation Prohibited

Unless otherwise authorized, permitted, or exempted pursuant to the terms and provisions of this Chapter, the practice of being in and upon a private Residence within the City by Solicitors, for the purpose of Home Solicitation Sales or to provide Goods or Services, is prohibited and is punishable as set forth in this Chapter.

5.08.040 Registration of Solicitors

- A. Unless otherwise exempt under this Chapter, all persons desiring to engage in Door-to-Door Solicitation within the City, prior to doing so, shall submit a Completed Application to the Licensing Officer and obtain a Certificate.
- B. The executed original of this Certificate of Registration shall be maintained by the Licensing Officer, and a legible copy shall be maintained on the Registered Solicitor's person at all times while soliciting in the City and shall be produced for inspection upon the request of any resident being solicited, any Peace Officer, or current City Official or Employee.
- C. Unless a person is a Registered Solicitor and has a Certificate of Registration and identification badge in their possession as required in this Chapter, or is otherwise exempt from registration under the provisions of this Chapter, it is a violation of this Chapter for said person to be present in or at a residence within the City for the purpose of engaging in solicitation. Violations of this subsection shall be punishable as set forth in this Chapter.

5.08.050 Application Form

The Licensing Officer shall provide a standard Application Form for use for the Registration of Solicitors. Each Application Form shall require disclosure and reporting by the Applicant of all the required information, documentation, and fees set forth by City ordinance, resolution, or policy, including, but not limited to the following:

- A. The Applicant's true, correct, and legal name, including any former names or aliases used during the last ten (10) years;
- B. The Applicant's telephone number, email address, home address, and mailing address;
- C. If different from the Applicant, the name, address, email address, and telephone number of the Responsible Person or Entity;
- D. A valid driver's license issued by any State, a valid passport issued by the United States, a valid identification card issued by any State, or valid identification issued by a branch of the United States military;
- E. Marketing information;
- F. An original or a copy of a BCI background check as defined in 5.08.020;
- G. Responses to questions regarding Disqualifying Status;
- H. The Applicant shall pay such fees as determined applicable by the City according to the currently adopted Consolidated Fee Schedule.
- I. The Applicant shall execute the Application Form, stating upon oath or affirmation, under penalty of perjury, that based on the present knowledge and belief of the Applicant, the information provided is complete, truthful, and accurate.

5.08.060 Non-Transferability of Certificates

Certificates shall be issued only in the name of the Applicant and even though a Responsible Party or Entity, if any, shall be listed on the Certificate, it shall not be deemed to be issued to that Responsible Party or Entity. The Certificate shall be non-transferable. A Registered Solicitor desiring to facilitate or attempt to facilitate Home Solicitation Sales with different Goods or Services or to solicit for another Responsible Party or Entity, from those designated in the originally submitted Completed Application, shall submit a new application to the Licensing Officer.

5.08.070 Denial, Suspension, or Revocation of a Certificate of Registration

Upon review, the Licensing Officer shall refuse to issue, suspend, or revoke a Certificate of an Applicant for any of the following reasons:

- A. The Applicant fails to establish Proof of Identity, provide a BCI check, or pay the Fees;
- B. The information submitted by the Applicant is found to be incomplete or incorrect;
- C. The Completed Application or BCI indicates that the Applicant has a Disqualifying Status;
- D. The Applicant has previously been denied a Certificate by the City, or has had a Certificate revoked for grounds that still constitute a Disqualifying Status under this Chapter;
- E. Since the submission of the Application, the City has received a Substantiated Report regarding the past or present conduct of the Applicant that would result in a Disqualified Status;
- F. The City or other governmental entity has either Criminally Convicted or obtained a civil injunction against the Applicant for violating this Chapter or similar federal, state, or municipal laws in a manner rising to the level of a Disqualifying Status;
- G. Since the submission of the Application, a Final Civil Judgment has been entered against the Applicant indicating the Applicant had either engaged in fraud or that a debt of the Applicant was non-dischargeable in bankruptcy.

5.08.080 No Other City License or Approval Required

- A. Registered Solicitors and persons exempt from Registration need not apply for, nor obtain, any other license, permit, or registration from the City to engage in Door-to-Door Solicitation.
- B. Any Business licensed by the City under another City ordinance that uses employees, independent contractors, or agents for Door-to-Door Solicitation in an effort to provide any tangible or intangible benefit to the Business, shall be required to have such Solicitors obtain a Certificate, unless otherwise exempt from Registration.
- C. Those Responsible Persons or Entities associated with Registered Solicitors need not apply for, nor obtain any other business license or registration from the City, provided they do not establish a temporary or fixed place of business in the City.
Nothing herein is intended to interfere with or supplant any other requirement of federal, state, or other local law regarding any license, permit, or certificate that a Registered Solicitor is otherwise required to have or maintain.

5.08.090 Appeal

An Applicant or Registered Solicitor whose certificate has been denied or suspended shall have the right to appeal pursuant to the provisions found in NCC 5.02.150. The fees to initiate this process are as listed on the currently adopted Consolidated Fee Schedule. The decision to deny or suspend a certificate shall only be reversed, remanded, or modified if the decision is found to be unlawful, or arbitrary, and impulsive.

5.08.100 Deceptive Soliciting Practices Prohibited

- A. No Solicitor shall intentionally make any materially false or fraudulent statement in the course of Soliciting.
- B. A Solicitor shall immediately disclose to the consumer during any face-to-face Solicitation by verbal means and through use of the Badge and an information flyer;
 - 1. The name of the Solicitor;
 - 2. The name and address of the entity with whom the Solicitor is associated; and
 - 3. The purpose of the Solicitor's contact with the person and/or Competent Individual.
- C. No Solicitor shall use a fictitious name, an alias, or any name other than their true and correct name.
- D. No Solicitor shall represent directly or by implication that the granting of a Certificate of Registration implies any endorsement by the City of the Solicitor's Goods or Services or the individual Solicitor.

5.08.110 "No Solicitation" Notice

- A. Any occupant of a Residence may give notice of a desire to refuse Solicitors by displaying a "No Solicitation" sign which shall be posted on or near the main entrance door or on or near the property line adjacent to the sidewalk leading to the Residence.
- B. The display of such sign or placard shall be deemed to constitute notice to any Solicitor that the inhabitant of the Residence does not desire to receive and/or does not invite Solicitors.
- C. It shall be the responsibility of the Solicitor to check each Residence for the presence of any such Notice.

5.08.120 Duties of Solicitors

- A. Every person Soliciting shall check each Residence for any “No Soliciting” sign or placard or any other notice or sign notifying a Solicitor not to solicit on the premises, such as, but not limited to, “No Solicitation” signs. If such sign or placard is posted, such Solicitor shall desist from any efforts to solicit at the Residence or dwelling and shall immediately depart from such property. Possession of a Certificate of Registration does not in any way relieve any Solicitor of this duty.
- B. It is a violation of this Chapter for any person Soliciting to knock on the door, ring the doorbell, or in any other manner attempt to attract the attention of an occupant of a Residence that bears a “No Solicitation” sign or similar sign or placard for the purpose of engaging in or attempting to engage in a Home Solicitation Sale, Door-to-Door Soliciting, or Soliciting.
- C. It is a violation of this Chapter for any Solicitor through ruse, deception, or fraudulent concealment of a purpose to Solicit, to take action calculated to secure an audience with an occupant at a Residence.
- D. Any Solicitor who is at any time by an occupant of a Residence or dwelling to leave shall immediately and peacefully depart.
- E. The Solicitor shall not intentionally or recklessly make any physical contact with or touch another person without the person’s consent.
- F. The Solicitor shall not follow a person into a Residence without their explicit consent.
- G. The Solicitor shall not continue repeated Soliciting after a person and/or Competent Individual has communicated clearly and unequivocally their lack of interest in the subject, Goods, or Services of the Solicitor.
- H. The Solicitor shall not use obscene language or gestures.

5.08.130 Time of Day Restrictions

It shall be unlawful for any person, whether licensed or not, to solicit at a Residence before 9:00 A.M. or after 9:00 P.M. Mountain Time, unless the Solicitor has express prior permission from the resident to do so.

5.08.140 Penalties

Any person who violates any term or provision of this Chapter shall be guilty of a Class B Misdemeanor and shall be punished by a fine pursuant to NCC 1.08.

5.08.150 Additional Requirements

This Chapter shall not be construed so as to waive the provisions and requirements of any other ordinance and/or resolution of the City and the requirements and fees required herein shall be in addition to any other requirements and fees of any other ordinance and/or resolution of the City.

5.08.160 Severability

If any provision of this Chapter is held by a court of competent jurisdiction to be unconstitutional or for any reason invalid, such ruling or decision shall not affect the validity of the remaining provisions, which are adopted separately and independently and shall remain in force and effect.

5.08 Residential Solicitation

5.08.010 No Other City License or Approval Required

- A. Registered Solicitors and persons exempt from Registration need not apply for, nor obtain, any other license, permit, or registration from the City to engage in Door-to-Door Solicitation.
- B. Any Business licensed by the City under another City ordinance that uses employees, independent contractors, or agents for Door-to-Door Solicitation in an effort to provide any tangible or intangible benefit to the Business, shall be required to have such Solicitors obtain a Certificate, unless otherwise exempt from Registration.
- C. Those Responsible Persons or Entities associated with Registered Solicitors need not apply for, nor obtain any other business license or registration from the City, provided they do not establish a temporary or fixed place of business in the City.
- D. Nothing herein is intended to interfere with or supplant any other requirement of federal, state, or other local law regarding any license, permit, or certificate that a Registered Solicitor is otherwise required to have or maintain.

5.08.020 Definitions

For the purposes of this Chapter, the following definitions shall apply:

- A. “Advocating” means speech or conduct intended to inform, promote, or support Religious Belief, Political Position, or Charitable Activities.
- B. “Appellant” means the person or entity appealing the denial or suspension of a Certificate, either personally as an Applicant or Registered Solicitor, or on behalf of the Applicant or Registered Solicitor.
- C. “Applicant” means an individual who is at least sixteen (16) years of age and not a corporation, partnership, limited liability company, or other lawful entity who applies for a Certificate permitting Door-to-Door Solicitation.
- D. “Application Form” means a standardized paper or electronic form provided by the City to an Applicant to be completed and submitted as a part of Registration.
- E. “BCI” means an original or copy, dated no other than one hundred eighty (180) days prior to the date of the Application, of either:
 - 1. A verified criminal history report for the Applicant from the Utah Department of Public Safety Bureau of Criminal Identification; or
 - 2. Verification by the Utah Department of Public Safety Bureau of Criminal Identification that no criminal history rising to the level of a Disqualifying Status exists for the Applicant.
- F. “Business” means a commercial enterprise licensed by the City as a person or Entity under this Title, having a fixed or temporary physical location within the City.
- G. “Certificate” means a Certificate permitting Door-to-Door Solicitation in the City, applied for or issued pursuant to the terms of this Chapter. All Certificates issued pursuant to this Chapter shall expire on the date specified on the Certificate.
- H. “Charitable Activities” means Advocating by persons or Entities that either are, or support, a Charitable Organization.
- I. “Charitable Organization” includes any person, joint venture, partnership, limited liability company, corporation, association, group, or other Entity;

1. That is:
 - i. A benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious, social welfare or advocacy, public health, environmental or conservation, or civic organization;
 - ii. For the benefit of a public safety, law enforcement, or firefighter fraternal association; or
 - iii. Established for any charitable purpose; and
 2. That is tax exempt under applicable provisions of the Internal Revenue Code of 1986 as amended, and qualified to solicit and receive tax deductible contributions from the public for charitable purposes.
 3. Charitable Organization includes a chapter, branch, area, or office, similar affiliate or any person soliciting contributions within the state for a Charitable Organization that has its principal place of business outside the City or State of Utah.
- J. “Competent Individual” means a person claiming or appearing to be at least eighteen (18) years of age and of sufficiently sound mind and body to be able to engage in rational thought, conversation, and conduct.
- K. “Completed Application” means a fully completed Application Form, a BCI, two copies of the original identification relied on by the Applicant to establish Proof of Identity, and the tendering of Fees.
- L. “Criminally Convicted” means the final entry of a conviction, whether by a plea of no contest, guilty, entry of a judicial or jury finding guilt, which has not been set aside on appeal or pursuant to a writ of habeas corpus. The criminal conviction is that offense of which the Applicant or Registered Solicitor was convicted, without regard to the reduced status of the charge after completion of conditions of probation or parole, and charges dismissed under a plea in abeyance or diversion agreement.
- M. “Disqualifying Status” means anything specifically defined in this Chapter as requiring the denial or suspension of a Certificate, and any of the following:
1. The Applicant or Registered Solicitor has been Criminally Convicted or has criminal charges currently pending for: (i) felony homicide, (ii) sexual assault of any kind, (iii) the sale or distribution of controlled substances, or (iv) physically abusing, sexually abusing, or exploiting a minor;
 2. The Applicant or Registered Solicitor has been Criminally Convicted of a felony within the last ten (10) years;
 3. The Applicant or Registered Solicitor has been incarcerated in a federal or state prison within the past five (5) years;
 4. The Applicant or Registered Solicitor has been Criminally Convicted of a misdemeanor within the past five (5) years involving a crime of: (i) moral turpitude, or (ii) violent or aggravated conduct involving persons or property.
 5. A Final Civil Judgement been entered against the Applicant or Registered Solicitor within the last five (5) years indicating that: (i) the Applicant or Registered Solicitor had either engaged in fraud, or intentional misrepresentation, or (ii) that a debt of the Applicant or Registered Solicitor was non-dischargeable in bankruptcy;
 6. The Applicant or Registered Solicitor is currently on parole or probation to any court, penal institution, or governmental entity, including being under house arrest or subject to a tracking device;

7. The Applicant or Registered Solicitor has an outstanding arrest warrant from any jurisdiction; or
 8. The Applicant or Registered Solicitor is currently subject to a protective order based on physical or sexual abuse issued by a court of competent jurisdiction.
- N. “Door-to-Door Solicitation” means the practice of engaging in or attempting to engage in conversation with any person at a Residence or dwelling, whether or not that person is a Competent Individual, while making or seeking to make or facilitate a Home Solicitation Sale, or attempting to further the sale of Goods and/or Services.
- O. “Entity” includes a corporation, partnership, limited liability company, or other lawful entity, organization, society, or association.
- P. “Fees” means the cost charged to the Applicant or Registered Solicitor for the issuance of a Certificate and/or Identification Badge as enumerated on the currently adopted Consolidated Fee Schedule.
- Q. “Final Civil Judgement” means a civil judgement that would be recognized under state law as a judgement to which collateral estoppel would apply.
- R. “Goods” means one or more tangible items, wares, objects of merchandise, perishables of any kind, subscriptions, or manufactured products offered, provided, or sold.
- S. “Home Solicitation Sale” means to make or attempt to make a Sale of Goods or Services by a Solicitor at a Residence by means of Door-to-Door Solicitation, regardless of the means of payment or consideration used for the purchase or the time of delivery of the Goods or Services.
- T. “Licensing Officer” means the City employee(s) or agent(s) responsible for receiving from an Applicant or Registered Solicitor the Completed Application and either granting, suspending, or denying the Applicant’s Certificate.
- U. “No Solicitation Sign” means a reasonably visible and legible sign that states “No Soliciting”, “No Solicitors”, “No Salespersons”, “No Trespassing”, or words of similar import.
- V. “Political Position” means any actually held belief, or information for, against, or in conjunction with any political, social, environmental, or humanitarian belief or practice.
- W. “Registered Solicitor” means any person who has been issued a current Certificate by the City.
- X. “Registration” means the process used by the City Licensing Officer to accept a Completed Application and determine whether or not a Certificate will be denied, granted, or suspended.
- Y. “Religious Belief” means any sincerely held belief, or information for, against, or in conjunction with, any theistic, agnostic, or atheistic assumption, presumption or position, or religious doctrine, dogma, or practice regardless of whether or not the belief or information is endorsed by any other person or public or private entity.
- Z. “Residence” means any living unit contained within any building or structure that is occupied by any person as a dwelling consistent with the zoning laws of the City, together with the lot or other real property on which the living unit is located. This does not include the sidewalk, public street, or rights of way.
- AA. “Responsible Person or Entity” means that person or Entity responsible to provide the following to an Applicant, Registered Solicitor, and the Competent Individual in a Residence to whom a Sale of Goods or Services is made or attempted to be made by means of a Home Solicitation Sale:

1. Maintaining a state sales tax number, computing the sales taxes owing from any Sale of Goods or Services, paying the sales taxes, and filing any required returns or reports;
 2. Facilitating and responding to requests from consumers who desire to cancel the sale pursuant to applicable contractual rights or law; and
 3. Refunding any monies paid or reversing credit card charges to those persons who timely rescind any sale pursuant to applicable contractual rights or law.
- BB. “Sale of Goods or Services” means the conduct and agreement of a Solicitor and the Competent Individual in a Residence regarding a particular Good(s) or Service(s) that entitles the consumer to rescind the same within three days under any applicable federal, state, or local law.
- CC. “Services” means those intangible goods or personal benefits offered, provided, or sold to a Competent Individual of a Residence.
- DD. “Soliciting” or “Solicit” or “Solicitation” means any of the following activities:
1. Seeking to obtain Sales or orders for the exchange of goods, wares, merchandise, or perishables of any kind, for any kind of remuneration or consideration, regardless of whether advance payment is sought;
 2. Seeking to obtain prospective customers to apply for or to purchase insurance, subscriptions to publications, or publications;
 3. Seeking to obtain contributions of money or any other thing of value for the benefit of any person or Entity;
 4. Seeking prospective customers for Goods or Services;
 5. Seeking to engage an individual in conversation at a Residence for the purpose of promoting or facilitating the receipt of information regarding Religious Belief, Political Position, Charitable Conduct, or a Home Solicitation Sale;
 6. Other activities falling within the commonly accepted definition of Soliciting, such as hawking or peddling.
- EE. “Solicitor” or “Solicitors” means a person(s) engaged in Door-to-Door Solicitation.
- FF. “Submitted in Writing” means the information for an appeal of a denial or suspension of a Certificate, submitted in any type of written statement to the City offices by mail or hand delivery.
- GG. “Substantiated Report” means an oral, written, or electronic report:
1. That is submitted to and documented by the City by a Competent Individual who is willing to provide law enforcement or other City employee(s) with publicly available identification of their name, address, and any other reliable means of contact or any other regularly established law enforcement agency at any level of government.
 2. That provides any of the following information regarding a Registered Solicitor:
 - i. Documented verification of a previously undisclosed Disqualifying Status of a Registered Solicitor;
 - ii. Probable cause that the Registered Solicitor has committed a Disqualifying Status which has not been determined to be a Disqualifying Status;
 - iii. Documented, eye-witness accounts that the Registered Solicitor has engaged in repeated patterns of behavior that demonstrates failure by the Registered Solicitor to adhere to the requirements of this Chapter; or

- iv. Probable cause that continued licensing of the Registered Solicitor creates exigent circumstances that threaten the health, safety, or welfare of any individuals or entities within the City.
- HH. “Waiver” means the printed or electronic form provided to the Applicant by the City wherein the Applicant agrees that the City may obtain a name/date of birth BCI background check on the Applicant for licensing purposes under this Chapter.

5.08.030 Exemptions from Chapter

Individuals that qualify for exemption under this Chapter need not Register as required by this Chapter. Those Persons exempt from Registration are exempt from the duties and prohibitions outlined in this Chapter while Advocating or Soliciting. The following are exempt from Registration under this Chapter:

- A. Persons specifically invited to a Residence by a Competent Individual prior to the time of the person’s arrival at the Residence or dwelling. An invited solicitation shall not include the circumstance where the resident invites back a solicitor who initiated the contact with the resident at the residence. A resident’s failure to post a “No Soliciting” sign or placard or like notice may not be construed as an invitation to solicitation by such resident, or as an expression of such resident’s desire to hear or receive solicitations;
- B. Persons delivering goods to a Residence pursuant to a previously made order, or persons providing Services at a Residence pursuant to a previously made request by a Competent Individual;
- C. Persons performing noncommercial, neighborly acts of kindness, including but not limited to, mowing lawns, mending fences, providing meals, and rendering aid;
- D. Persons advocating or disseminating information for, against, or in conjunction with, any Religious Belief, or Political Position regardless of whether Goods, Services, or any other consideration is offered or given, with or without any form of commitment, contribution, donation, pledge, or purchase; and
- E. Solicitation on behalf of a charitable organization as defined by Utah Code Annotated §13-22, or an organization listed in Utah Code Annotated §13-22. This charitable exemption shall apply to students Soliciting contributions to finance extracurricular social, athletic, artistic, scientific, or cultural programs, provided the Solicitation has been approved by the school administration.

5.08.040 Solicitation Prohibited

Unless otherwise authorized, permitted, or exempted pursuant to the terms and provisions of this Chapter, the practice of being in and upon a private Residence within the City by Solicitors, for the purpose of Home Solicitation Sales or to provide Goods or Services, is prohibited and is punishable as set forth in this Chapter.

5.08.050 Registration of Solicitors

- A. Unless otherwise exempt under this Chapter, all persons desiring to engage in Door-to-Door Solicitation within the City, prior to doing so, shall submit a Completed Application to the Licensing Officer and obtain a Certificate.
- B. The executed original of this Certificate of Registration shall be maintained by the Licensing Officer, and a legible copy shall be maintained on the Registered Solicitor’s person at all times while soliciting in the City and shall be produced for inspection upon

the request of any resident being solicited, any Peace Officer, or current City Official or Employee.

- C. Unless a person is a Registered Solicitor and has a Certificate of Registration and identification badge in their possession as required in this Chapter, or is otherwise exempt from registration under the provisions of this Chapter, it is a violation of this Chapter for said person to be present in or at a residence within the City for the purpose of engaging in solicitation. Violations of this subsection shall be punishable as set for in this Chapter.

5.08.060 Application Form

The Licensing Officer shall provide a standard Application Form for use for the Registration of Solicitors. Each Application Form shall require disclosure and reporting by the Applicant of all the required information, documentation, and fees set forth by City ordinance, resolution, or policy including, but not limited to the following:

- A. The Applicant's true, correct, and legal name, including any former names or aliases used during the last ten (10) years;
- B. The Applicant's telephone number, email address, home address, and mailing address;
- C. If different from the Applicant, the name, address, email address, and telephone number of the Responsible Person or Entity;
- D. A valid driver's license issued by any State, a valid passport issued by the United States, a valid identification card issued by any State, or valid identification issued by a branch of the United States military;
- E. Marketing information;
- F. An original or a copy of a BCI background check as defined in 5.08.020;
- G. Responses to questions regarding Disqualifying Status;
- H. The Applicant shall pay such fees as determined applicable by the City according to the currently adopted Consolidated Fee Schedule.
- I. The applicant shall execute the Application Form, stating upon oath or affirmation, under penalty of perjury, that based on the present knowledge and belief of the Applicant, the information provided is complete, truthful, and accurate.

5.08.070 Maintenance of Registry

In accordance with the currently adopted City Retention Schedule and/or Utah State Division of Archives and Records Service General Retention Schedule, the Licensing Officer shall maintain and make available for public inspection a copy or record of every Completed Application received, and the Certificate or written denial issued by the City. The Applicant's BCI background check shall remain a confidential, protected, private record not available for public inspection. The Licensing Officer may furnish to the City's law enforcement agency a listing of all Applicants, those denied, and those issued a Certificate.

5.08.080 Non-Transferability of Certificates

Certificates shall be issued only in the name of the Applicant and even though a Responsible Party or Entity, if any, shall be listed on the Certificate, it shall not be deemed to be issued to that Responsible Party or Entity. The Certificate shall be non-transferable. A Registered Solicitor desiring to facilitate or attempt to facilitate Home Solicitation Sales with different Goods or Services or to solicit for another Responsible Party or Entity, from those designated in the

originally submitted Completed Application, shall submit a new application to the Licensing Officer.

5.08.090 Denial, Suspension, or Revocation of a Certificate of Registration

Upon review, the Licensing Officer shall refuse to issue, or suspend, or revoke a Certificate of an Applicant for any of the following reasons:

- A. The Applicant fails to establish Proof of Identify, provide a BCI check, or pay the Fees;
- B. The information submitted by the Applicant is found to be incomplete or incorrect;
- C. The Completed Application or BCI indicates that the Applicant has a Disqualifying Status;
- D. The Applicant has previously been denied a Certificate by the City, or has had a Certificate revoked for grounds that still constitute a Disqualifying Status under this Chapter;
- E. Since the submission of the Application, the City has received a Substantiated Report regarding the past or present conduct of the Applicant that would result in a Disqualified Status;
- F. The City or other governmental entity has either Criminally Convicted or obtained a civil injunction against the Applicant for violating this Chapter or similar federal, state, or municipal laws in a manner rising to the level of a Disqualifying Status;
- G. Since the submission of the Application, a Final Civil Judgement has been entered against the Applicant indicating the Applicant had either engaged in fraud or that a debut of the Applicant was non-dischargeable in bankruptcy.

5.08.100 Appeal

An Applicant or Registered Solicitor whose certificate has been denied or suspended shall have the right to appeal pursuant to the provisions found in NCC 5.02.150. The fees to initiate this process are as listed on the currently adopted Consolidated Fee Schedule. The decision to deny or suspend a certificate shall only be reversed, remanded, or modified if the decision is found to be unlawful, or arbitrary, and impulsive.

5.08.110 Deceptive Soliciting Practices Prohibited

- A. No Solicitor shall intentionally make any materially false or fraudulent statement in the course of Soliciting.
- B. A Solicitor shall immediately disclose to the consumer during any face-to-face Solicitation by verbal means or through use of the Badge and an information flyer;
 - 1. The name of the Solicitor;
 - 2. The name and address of the entity with whom the Solicitor is associated; and
 - 3. The purpose of the Solicitor's contact with the person and/or Competent Individual.
- C. No Solicitor shall use a fictitious name, an alias, or any name other than their true and correct name.
- D. No Solicitor shall represent directly or by implication that the granting of a Certificate of Registration implies any endorsement by the City of the Solicitor's Goods or Services or the individual Solicitor.

5.08.120 "No Solicitation" Notice

- A. Any occupant of a Residence may give notice of a desire to refuse Solicitors by displaying a "No Solicitation" sign which shall be posted on or near the main entrance door or on or near the property line adjacent to the sidewalk leading to the Residence.

- B. The display of such sign or placard shall be deemed to constitute notice to any Solicitor that the inhabitant of the Residence does not desire to receive and/or does not invite Solicitors.
- C. It shall be the responsibility of the Solicitor to check each Residence for the presence of any such Notice.

5.08.130 Duties of Solicitors

- A. Every person Soliciting shall check each Residence for any “No Soliciting” sign or placard or any other notice or sign notifying a Solicitor not to solicit on the premises, such as, but not limited to, “No Solicitation” signs. If such sign or placard is posted such Solicitor shall desist from any efforts to solicit at the Residence or dwelling and shall immediately depart from such property. Possession of a Certificate of Registration does not in any way relieve any Solicitor of this duty.
- B. It is a violation of this Chapter for any person Soliciting to knock on the door, ring the doorbell, or in any other manner attempt to attract the attention of an occupant of a Residence that bears a “No Solicitation” sign or similar sign or placard for the purpose of engaging in or attempting to engage in a Home Solicitation Sale, Door-to-Door Soliciting, or Soliciting.
- C. It is a violation of this Chapter for any Solicitor through ruse, deception, or fraudulent concealment of a purpose to Solicit, to take action calculated to secure an audience with an occupant at a Residence.
- D. Any Solicitor who is at any time by an occupant of a Residence or dwelling to leave shall immediately and peacefully depart.
- E. The Solicitor shall not intentionally or recklessly make any physical contact with or touch another person without the person’s consent.
- F. The Solicitor shall not follow a person into a Residence without their explicit consent.
- G. The Solicitor shall not continue repeated Soliciting after a person and/or Competent Individual has communicated clearly and unequivocally their lack of interest in the subject, Goods, or Services of the Solicitor.
- H. The Solicitor shall not use obscene language or gestures.

5.08.140 Time of Day Restrictions

It shall be unlawful for any person, whether licensed or not, to solicit at a Residence before 9:00 A.M. or after 9:00 P.M. Mountain Time, unless the Solicitor has express prior permission from the resident to do so.

5.08.150 Buyer’s Right to Cancel

In any Home Solicitation Sale, unless the buyer requests the Solicitor to provide Goods or Services without delay in an emergency, the seller or Solicitor shall present to the buyer and obtain buyer’s signature to a written statement which informs the buyer of the right to cancel within the third business day after signing an agreement to purchase. Such notice of “Buyer’s Right to Cancel” shall be in the form required by Utah Code Annotated §70C-5-103 or a current version thereof or any State or Federal law modifying or amending such provision.

5.08.160 Penalties

Any person who violates any term or provision of this Chapter shall be guilty of a Class B Misdemeanor and shall be punished by a fine pursuant to NCC 1.08.

5.08.170 Additional Requirements

This Chapter shall not be construed so as to waive the provisions and requirements of any other ordinance and/or resolution of the City and the requirements and fees required herein shall be in addition to any other requirements and fees of any other ordinance and/or resolution of the City.

5.08.180 Severability

If any provision of this Chapter is held by a court of competent jurisdiction to be unconstitutional or for any reason invalid, such ruling or decision shall not affect the validity of the remaining provisions, which are adopted separately and independently and shall remain in force and effect.

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Agenda Item #10

Description	Discussion and Consideration: Ordinance 26-11— Development Agreement for the 4150 Hollow Road Subdivision, a 2-Lot Standard Subdivision, Setting Forth Terms and Conditions for the Development, Including Exceptions to Nibley City Code 21.12.050(D) Curb, Gutter and Sidewalks (Second Reading)
Presenter	Levi Roberts, City Planner
Staff Recommendation	Approval of Ordinance 26-11: Development Agreement for the 4150 Hollow Road Subdivision, a 2-Lot Standard Subdivision, Setting Forth Terms and Conditions for the Development, Including Exceptions to Nibley City Code 21.12.050(D) Curb, Gutter and Sidewalks with the following condition: • The applicant be required to pay a fee-in-lieu of required improvements in accordance with NCC 21.12.050(D)(3)
Planning Commission Recommendation	Approval of Ordinance 26-11: Development Agreement for the 4150 Hollow Road Subdivision, a 2-Lot Standard Subdivision, Setting Forth Terms and Conditions for the Development, Including Exceptions to Nibley City Code 21.12.050(D) Curb, Gutter and Sidewalks with the following condition: • The applicant be required to pay a fee-in-lieu of required improvements in accordance with NCC 21.12.050(D)(3)
Reviewed By	Mayor Larry Jacobsen Levi Roberts, Planner Justin Maughan, City Manager Tom Dickinson, City Engineer Mohamed Abdullahi, City Attorney

Additional Background Since 8-6-26:

During the first reading, the Council posed questions regarding the limits of use for the potential fee-in-lieu of required improvements. Below is his response to these questions.

Do the funds need to be earmarked for the same frontage improvements?

No. The money does not even have to solely benefit the individual subdivision. However, the City must use the collected fees in a way that demonstrably benefits the specific subdivision in question. See Call v. West Jordan, 606 P.2d

217. *The Court in Call said that the fee/dedication "should have some reasonable relationship to the needs created by the subdivision."*

Must the funds be used within a certain time?

No. I cannot find anything requiring the City to spend the money within a certain number of years. Unlike impact fees, fees instead of improvements have no statutorily required timeframe.

Background:

The owner of parcel 03-018-0015 has received approval for Preliminary Plat for the 4150 Hollow Road Subdivision, a proposed 2-lot subdivision. The proposed Subdivision is located 4150 S Hollow Road. The property is zoned R-1A.

As part of this approval, the applicant proposed that required curb, gutter and sidewalk improvements be limited to lot 1.

NCC 21.12.050(D) provides "Curb, Gutter and Sidewalks: The subdivider shall be required to install curb and gutter on all new and existing streets within or adjoining the proposed subdivision." Based upon this requirement, Staff provided a comment to the applicant to provide curb and sidewalks along the entire frontage of Hollow Road at the time of concept review for this application. The applicant sought an advisory opinion from the Utah State Office of the Property Rights Ombudsman on this exaction. This advisory opinion is included in the packet and concluded:

The exaction required by Nibley City for the Rigbys to dedicate and improve the entire frontage of their two-lot subdivision constitutes an unlawful development exaction. Because the proposed subdivision creates a net impact of just one additional residential lot, the City may only impose exactions that offset the specific impacts of that single new residence.

Consistent with this opinion, Staff recommended and Planning Commission approved the required street front improvements for this development limited to the frontage of lot 1, where the new home will be located.

The applicant has since requested a consideration for a development agreement that would grant an exception to this provision of Nibley City Code and not require the sidewalks, curb and gutter, or park strip improvements along lot 1 of the subdivision.

The applicant has justified this exception as there are no sidewalk or curb improvements in the vicinity or any published plans for extending sidewalks along Hollow Road.

NCC 21.12.050(D)(3) states the following:

The requirement for curb and gutter on existing streets may be waived only if future changes to the street are anticipated that would make the installation of curb and gutter unwise. In such cases, the Planning and Zoning Commission may require that the subdivider pay to the city a sum equal to the best estimate of the cost of the improvements not installed to allow sufficient funds to later

complete the improvements. Any such proceeds shall be placed in the street capital improvement fund.

Since, at present time, the sidewalk has limited utility and may be more efficiently built as part of more extensive streetscape improvements, Staff recommends requiring the fee-in-lieu of curb and sidewalk improvements, in accordance with NCC 21.12.050(D)(3) so that the City has the option of utilizing such funds to complete the improvements at a future date. When such improvements are completed, the cost of improvements would be borne by the developer, rather than the community at large.

The Nibley City Planning and Zoning Commission held a public hearing for this development agreement on July 31, 2026. The Commissioners unanimously recommended passage of the ordinance as presented and recommended by Staff.

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ORDINANCE 26-11

**DEVELOPMENT AGREEMENT FOR THE 4150 HOLLOW ROAD SUBDIVISION, A 2-LOT
STANDARD SUBDIVISION, SETTING FORTH TERMS AND CONDITIONS FOR THE
DEVELOPMENT, INCLUDING EXCEPTIONS TO NIBLEY CITY CODE 21.12.050(D) CURB,
GUTTER AND SIDEWALKS**

WHEREAS, The 4150 Hollow Road Subdivision was approved as a Standard Subdivision; and

WHEREAS, The Utah State Ombudsman has opined that the exaction required by Nibley City for the Rigby's to dedicate and improve the entire frontage of their two-lot subdivision constitutes an unlawful development exaction. Because the proposed subdivision creates a net impact of just one additional residential lot, the City may only impose exactions that offset the specific impacts of that single new residence; and

WHEREAS, at present time, the required sidewalk, curb and gutter improvements have limited utility and may be more efficiently built as part of more extensive streetscape improvements.

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

1. The attached Development Agreement be approved
2. The Agreement shall not take place until the Developer and City have signed the attached Agreement and said Agreement has been properly recorded as required by Nibley City Code.
3. 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 and law, order, resolution or ordinance or part thereof.

PASSED BY THE NIBLEY CITY COUNCIL THIS ____ DAY OF _____ 2026

Larry Jacobsen, Mayor

ATTEST:

Cheryl Bodily, City Recorder

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DEVELOPMENT AGREEMENT

This Development Agreement (the “Agreement”) is entered into this _____ day of _____, 2026, by and between the City of Nibley, Utah, a municipal corporation (the “City”), and MICHAEL & MARIE RIGBY (the “Developer”). The City and Developer are collectively referred to as the “Parties.”

RECITALS

WHEREAS, the Developer owns or otherwise has the right to develop certain property located within the City, identified as Cache County Parcel 03-043-0036, containing approximately 1.8 acres (the “Property”), and seeks to develop the same as 4150 Hollow Road Subdivision (the “Development”);

WHEREAS, the Development construction plans identify improvements required to connect to or enhance City infrastructure, including but not limited to streets, water, sewer, stormwater, and utilities (the “Improvements”);

WHEREAS, the City has reviewed the construction plans for the Development (the “Construction Plans”) and determined that the Improvements must be constructed in accordance with City standards, specifications, and applicable laws;

WHEREAS, the Developer is required to furnish financial security to guarantee the completion of the Improvements;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Incorporation Of Recitals And Exhibits.

The Recitals set forth above, and the following Exhibits are incorporated into this Agreement by reference:

- **Exhibit A:** Legal Description of the Property.

2. Compliance With Regulations And Zoning.

2.1 Unless otherwise outlined in this Agreement, the Development shall comply with all applicable federal, state, and local laws, ordinances, codes, and regulations, including the City’s zoning and land use regulations.

2.2 Modifications to zoning or development standards expressly approved in this Agreement shall control and take precedence over conflicting regulations.

- 2.2.1 Developer shall not be required to construct sidewalks, curb and gutter, or park strip as a part of the Development. Nothing herein shall be construed as a waiver of the City’s authority to install such improvements in

connection with future development, redevelopment, or roadway improvements affecting the property. However, Developer is only required to match the existing improvements along Hollow Road and will not be responsible for any future improvements.

3. Construction Of Improvements And Timing.

3.1 The Developer shall construct all Improvements in accordance with the Construction Plans and complete them no later than _____ (“Improvement Completion Date”).

3.2 Extensions of time may be granted by the City upon written request, provided the Developer furnishes updated Improvement Security and a revised completion plan.

4. Project Phasing. If applicable, the Development shall be constructed in phases as outlined in the approved phasing plan. Each phase shall include specific milestones and associated public improvements.

5. Occupancy Restrictions. No occupancy or use of any structure within the Development shall be permitted until all life safety Improvements are completed, inspected, and approved by the City.

6. Financial Security / Performance Assurance.

6.1 The Developer shall provide Improvement Security Assurance equal to the amounts and types specified in Nibley City Code (“NCC”) §21.14.060.

6.2 The Improvement Security shall have a term of at least 24 months. Alternatively, if approved by the City in writing, the Improvement Security may have a term of 12 months if it contains a one-year automatic renewal clause.

7. Security Release Procedures.

7.1 The Developer may request an early partial release pursuant to NMC §12.14.060.

7.2 Final acceptance and release of the remaining Improvement Security shall occur after the City issues a final acceptance letter.

8. Warranty Period And Warranty Assurance.

8.1 The Developer shall provide a one-year warranty for all Improvements, secured by a warranty assurance.

8.2 The Developer shall request a warranty inspection at the end of the Warranty Period.

9. Wetlands And Environmental Protections.¹

9.1 The Developer shall obtain a jurisdictional determination from the U.S. Army Corps of Engineers for any wetlands on the Property.

9.2 The Developer shall comply with all environmental protections required by federal, state, and local law.

10. Maintenance And Street Operations. The Developer shall provide street maintenance until the end of the Warranty Period. The Developer may elect to have the City assume maintenance responsibilities prior to the end of the Warranty Period provided that Developer enters into an indemnification agreement with the City.

11. Reserved Legislative Powers. The City reserves the right to amend or repeal ordinances, provided such actions do not impair the Developer's vested rights under this Agreement.

12. Recordation And Priority Of Agreement. This Agreement shall be recorded against the Property and shall take priority over all other interests.

13. Succession And Assignment. This Agreement shall run with the land and bind all successors and assigns. Assignment of this Agreement requires prior written consent from the City.

14. Default And Remedies.

14.1 The non-breaching party shall provide 30 days' written notice of any default.

14.2 The City may exercise all remedies available at law or equity, including drawing on the Improvement Security and completing the Improvements.

15. Term And Termination.

15.1 This Agreement shall terminate if the Developer fails to commence construction within 12 months or complete the Development within 24 months of the Effective Date.

16. Force Majeure. Delays caused by events beyond the Developer's control, such as natural disasters, shall not constitute a breach of this Agreement.

17. Periodic Review. The City may conduct periodic reviews to ensure compliance with this Agreement.

18. Third Parties. This Agreement is for the sole benefit of the Parties and their successors. No third party shall have any rights under this Agreement.

¹ This section only applies if there are wetlands present on the Development.

19. Representations And Authority. The Parties represent that they have the authority to execute this Agreement.

20. Severability. If any provision of this Agreement is found invalid, the remaining provisions shall remain in effect.

21. No Waiver. Failure to enforce any provision of this Agreement shall not constitute a waiver of that provision.

22. Amendments. This Agreement may only be amended in writing, signed by both Parties.

25. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements.

26. Governing Law and Venue. This Agreement shall be governed by Utah law. Disputes shall be resolved in the First Judicial District Court, Cache County, Utah.

27. Representations. The persons signing this Agreement on behalf of the parties represent and warrant that they have the authority and authorization to execute this Agreement on behalf of the respective party such that the party will be bound by all rights, and processes necessary for a party to approve and execute the Agreement have each been completed.

For Nibley City:

By: _____

Mayor

Date: _____

Attested by:

City Recorder

For Developer:

By: _____

Date: _____

Name: _____

Title: _____

STATE OF UTAH)

: SS

County of _____)

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

NOTARY PUBLIC

STATE OF UTAH)

: SS

County of _____)

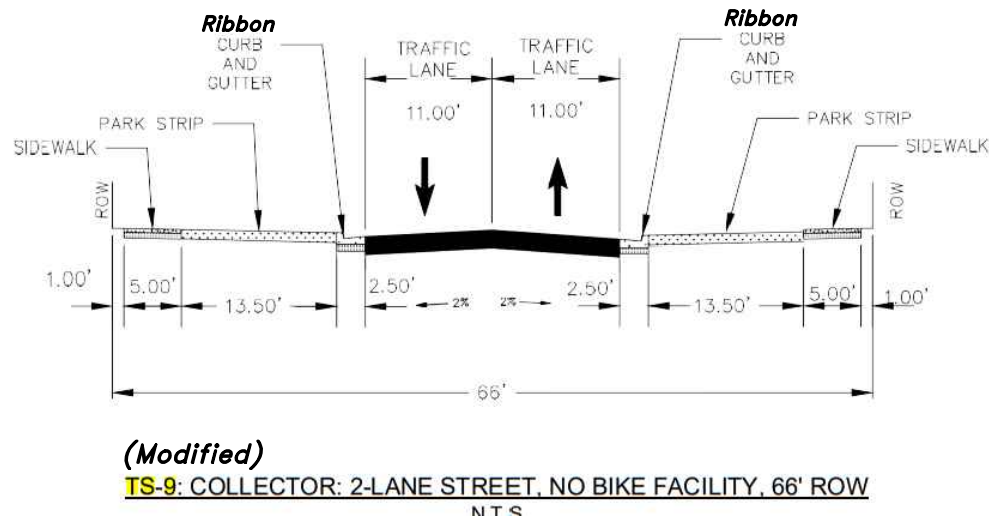
On the ____ day of _____, 20____, personally appeared before me, _____, the _____ of Developer, the signer of the foregoing instrument, who duly acknowledged to me that they executed the same.

NOTARY PUBLIC

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Preliminary Plat for
4150 Hollow Road Subdivision

A Part of the Southwest Quarter of Section 27,
Township 11 North, Range 1 East of the Salt Lake Base and Meridian



ENBRIDGE ENERGY NOTE:

Questar Gas Company, DBA Enbridge Energy Utah, hereby approves this plat solely for the purpose of confirming that the plat contains public utility easements. Enbridge Energy Utah may require additional easements in order to serve this development. This approval does not constitute abrogation or waiver of any other existing rights, obligations, or liabilities including prescriptive rights and other rights, obligations or liabilities provided by law or equity. This approval does not constitute acceptance, approval or acknowledgment of any terms contained in the plat, including those set forth in the owner's dedication or in the notes, and does not constitute a guarantee of particular terms or conditions of natural gas service. For further information please contact Enbridge Energy Utah's right-of-way department at 800-366-8532

Approved by Enbridge Energy, this _____ day
of _____ A.D., 20__.

By: _____ Title: _____

POWER NOTE:

- Pursuant to Utah Code Ann. 54-3-27 this plat conveys to the owner(s) or operators of utility facilities a public utility easement along with all the rights and duties described therein.
- Pursuant to Utah Code Ann. 17-27a-603(4)(c)(ii) Rocky Mountain Power accepts delivery of the P.U.E. as described in this plat and approves this plat solely for the purpose of confirming that the plat contains public utility easements and approximates the location of the public utility easements, but does not warrant their precise location. Rocky mountain power may require other easements in order to serve this development. This approval does not affect any right that Rocky Mountain Power has under:
 - a recorded easement or right-of-way;
 - the law applicable to prescriptive rights;
 - title 54, chapter 8a, damage to underground utility facilities or
 - any other provision of law.

Approved by the Rocky Mountain Power, this _____ day
of _____ A.D., 20__.

By: _____ Title: _____

GENERAL NOTES:

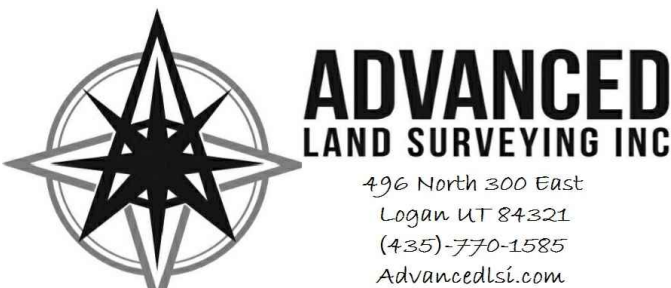
- Areas in Nibley have groundwater problems due to the varying depth of a water table. The City's approval of a final plat, building permit or construction plans does not constitute a representation by the City that building at any specified elevation or location would solve subsurface or groundwater problems. In addition, concerns for building elevation and/or grading and drainage are unique to each building site, remain solely with the building permit application, property owner and/or contractor. Nibley City is not responsible for any subsurface or groundwater problems which may occur, nor for such concerns including, but not limited to, building location and/or elevation, site grading and drainage.
- No structures may be built within any public utility easement, except as approved by the city engineer and affected public utility providers.
- All expenses involving the necessary improvements or extensions for sanitary sewer systems, gas service, electrical service, grading and landscaping, storm drain systems, curbs and gutters, fire hydrants, pavement, sidewalks, street lighting and signing, and other improvements shall be financed by the subdivider.
- This property is located in the vicinity of property that is used for agricultural purposes. It may be anticipated that such agricultural uses and activities, by or may not in the future be conducted in this area and that such uses are previously existing uses. Agricultural uses and situations must be sound agricultural practices and not bear a direct threat to the public health and safety.
- Trees every 50' are required along the street frontage as well as landscaping the park strip.
- All excavation and improvements, including ribbon curb, park strip, and sidewalk, are provisional and contingent upon the final opinion of the State Ombudsman and/or a formal agreement with the City

LEGEND

Subdivision Boundary	Section Corner
Lot Line	Found Survey Point
Adjoining property Line	Set 5/8" by 24" Rebar
Existing Water	With Cap
Existing Fence Line	Public Utility Easement
Existing Concrete Edge	* 10' on Front
Existing Storm Sewer	* 5' on Side
Existing Sewer	* 10' on Rear
Existing Flow Line	Setback Line
1' Contour Minor	* 30' from Street
5' Contour Major	* 10' Side
Existing Power Pole	* 25' Rear
Existing Fire Hydrant	Proposed Sewer
Existing Sewer Manhole	Proposed Water
	Proposed Concrete

NARRATIVE

The purpose of this survey was to divide the parcel as shown and described hereon. The survey was ordered by Michael Rigby. The control used to establish the property corners was the existing Cache County Survey monumentation located in the Southwest Quarter of Section 27, Township 11 North, Range 1 East, Salt Lake Base & Meridian. The basis of bearing is the South line of said Southwest Quarter, which bears North 89°37'36" East, "Utah Coordinate System 1983 North Zone".



ATTORNEY APPROVAL
Approved as to form this _____ day of _____
20__.

City Attorney _____ Date _____

ENGINEER'S APPROVAL

I certify that I have examined this plat and find it to be correct and in accordance with the information in this office and the city ordinance

City Engineer _____ Date _____

PLANNING COMMISSION APPROVAL

This plat recommended for approval by the Nibley City Planning Commission this _____ day of _____ A.D., 20__.

Chairman _____ Date _____

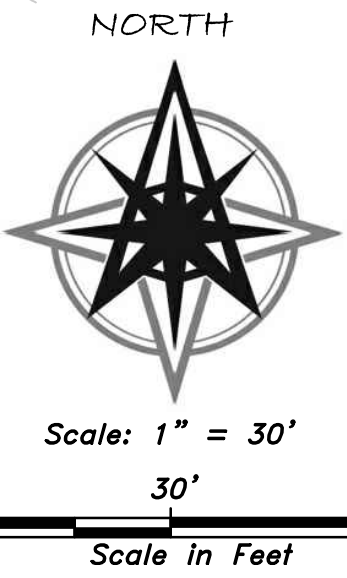
COUNCIL APPROVAL

Approved & Accepted by the Nibley City Council, this _____ day of _____ A.D., 20__.

Chairman _____
Attest: _____ City Clerk

RECORD OWNERS & DEVELOPER

Michael & Marie Rigby
4150 S Hollow Road
Nibley UT

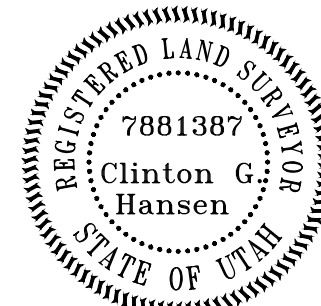


SURVEYOR'S CERTIFICATE

I, Clinton G. Hansen, do hereby certify that I am a Registered Land Surveyor, and that I hold certificate No. 7881387, as prescribed under the laws of the State of Utah, I further certify that by authority of the owners I have made a survey of the tract of land shown on this plat and described below, and have subdivided said tract of land hereafter to be known as 4150 Hollow Road Subdivision and the same had been correctly surveyed and all streets are the dimensions shown.

Clinton G. Hansen
P.L.S. No. 7881387

Date _____



SUBDIVISION BOUNDARY

A Part of the Southwest Quarter of Section 27, Township 11 North,
Range 1 East of the Salt Lake Base and Meridian

Beginning at the Southwest Corner of Hollow Road Subdivision, Entry Number 940897, at a Point Located 1310.48 Feet North 89°37'36" East Along the South Line of said Southwest Quarter and 297.86 Feet North 00°22'24" West from the Southwest Corner of said Southwest Quarter and RUNNING THENCE North 40°49'48" West 425.70 Feet (North 39°46'30" West 446.60 Feet by Record) Along the Northeastly Right-of-Way Line of Hollow Road; Thence North 66°46'23" East 363.43 Feet (North 67°49'42" East 367.68 Feet by Record) to the West Line of said Hollow Road Subdivision; Thence Along said West Subdivision Line the Following Three (3) Courses: (1) South 05°11'47" West 369.39 Feet; (2) South 07°32'07" West 88.94 Feet; (3) South 48°15'52" West 14.11 Feet to the Point of Beginning. Containing 1.758 Acres.

OWNER'S DEDICATION

Know all men by these present that we, the undersigned owners of the tract of land (Parcel 03-043-0036) depicted and described hereon, having caused the same to be subdivided into lots, parcels, and streets (as pertains), together with easements as set forth to be hereafter known as the 4150 Hollow Road Subdivision, as depicted hereon and we hereby dedicate for the perpetual use of the public all streets and other areas shown on this plat as intended for public use. The undersigned owner's also convey to any and all public utility companies a perpetual, non-exclusive easement over the public utility easements shown on this plat. The same to be used for installation, maintenance, and operation of public utility service lines and facilities. The undersigned owner's also hereby convey any other easements as shown on this plat to the parties indicated and for the purpose shown hereon.

Michael Rigby

Date _____

Marie Rigby

Date _____

ACKNOWLEDGMENT

State of _____
County of _____

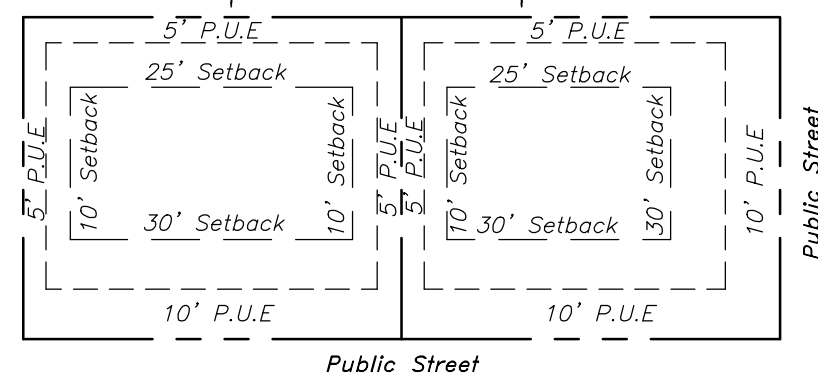
On this _____ day of _____, 20__, Michael Rigby and Marie Rigby, husband and wife, personally appeared before me, the undersigned Notary Public in and for said State and County, the signers of the attached Owners Dedication, whom duly acknowledged to me they signed it freely and voluntarily and for the purpose therein mentioned.

Notary Public Signature _____

Notary Public Commissioned in Utah
(Print Name)

Commission Number - Expires _____

TYPICAL LOT LAYOUT



COUNTY RECORDER

State of Utah
County of Cache

This plat has been duly acknowledged, certified, and approved and may lawfully be recorded in Cache County, Utah.

Filed and Recorded:
Filing No.: _____
Date: _____
Time: _____
Book: _____
Page: _____
Request of: _____

Cache County Recorder

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SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor



Office of the Property
Rights Ombudsman
UTAH DEPARTMENT OF COMMERCE

MARGARET W. BUSSE
Executive Director

JORDAN S. CULLIMORE
Division Director

ADVISORY OPINION

Advisory Opinion Requested By: Michael & Marie Rigby

Local Government Entity: Nibley City

Applicant for Land Use Approval: Michael & Marie Rigby

Type of Property: Residential

Date of this Advisory Opinion: May 7, 2026

Opinion Authored By: Jordan S. Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

ISSUE

Where a proposed split of an improved residential property will result in one additional residential lot, may the City lawfully require the dedication of right-of-way and construction of public improvements along the entire frontage of the two resulting lots?

SUMMARY OF ADVISORY OPINION

The exaction required by Nibley City for the Rigbys to dedicate and improve the entire frontage of their two-lot subdivision constitutes an unlawful development exaction. Because the proposed subdivision creates a net impact of just one additional residential lot, the City may only impose exactions that offset the specific impacts of that single new residence.

The City exacted public contribution from the existing residential structure at the time that structure was built and according to then existing development standards in the local code. If the City wants the existing development to match the public improvements required for the new development, it must use public funds to build them and negotiate in good faith or exercise eminent domain to acquire the necessary right-of-way. What the City cannot do, however, is condition the approval of proposed development by requiring a developer to bear a broader public burden beyond the immediate impact of the proposed development activity.

EVIDENCE

The Ombudsman's Office reviewed the following relevant documents and information prior to completing this Advisory Opinion:

1. Request for Advisory Opinion submitted by Michael & Marie Rigby, received December 12, 2025.
2. Letter from Eric Johnson, Attorney for Nibley City, dated March 23, 2026.
3. Reply from Michael Rigby, received March 28, 2026.
4. Response from Eric Johnson, Attorney for Nibley City, dated April 24, 2026.

BACKGROUND

Michael and Marie Rigby (Rigbys) own a 1.8-acre parcel located at 4150 South Hollow Road in Nibley City (City). The parcel contains an existing single-family dwelling. In accordance with the City's R-1A zoning, which requires a 0.75-acre minimum lot size, the Rigbys proposed to divide the existing parcel into a two-lot subdivision to create one additional single-family residential lot. During the preliminary subdivision review phase, Nibley City staff informed the Rigbys that they must construct curb, gutter, sidewalk, and a parking strip along the property's entire frontage on Hollow Road and also dedicate the associated right-of-way. The Rigbys view this requirement as an unlawful and excessive development exaction.

ANALYSIS

The City's requirement to dedicate right-of-way and provide frontage improvements is a development exaction. "A development exaction is a government-mandated contribution of property imposed as a condition of approving a developer's project." *B.A.M. Development, LLC v. Salt Lake County* ("B.A.M. III"), 2012 UT 26 ¶ 16. Under applicable state and federal law, local governments may require dedication of property for public facilities, such as roads and associated facilities, provided the dedication address only the impacts created by proposed new development. An "exaction must alleviate the burdens imposed on infrastructure by the development." *Id.* (emphasis added).

I. The Rough Proportionality Test

When a municipality requires a landowner to dedicate land for a public purpose as a condition of some land use approval, the municipality has the burden of proving that the requirement satisfies a constitutional "rough proportionality" test. *See Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994) (stating that the government "must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development"). This rough proportionality test is also articulated in state statute and Utah case law, and requires the following:

1. An Essential Link (Nexus): There must be a close connection between a legitimate land use interest or purpose and the required exaction.
2. Rough Proportionality (Nature and Extent): The exaction must be roughly proportionate, both in *nature* and *extent*, to the impact of the proposed development.
 - o *Nature*: The nature aspect requires a "problem and solution" analysis. The proposed development's impact is the problem or burden the community will bear, and the exaction must provide a solution that directly addresses that problem.

- *Extent*: The extent aspect focuses on relative costs. The cost of the exaction to the developer must be roughly equivalent to the cost to the municipality to assuage the impact created by the development.

See Utah Code § 10-20-911, *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825 (1987), *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994), *B.A.M. Development, LLC v. Salt Lake County* (“*B.A.M. II*”), 2008 UT 74, *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (2024).

For an exaction to be lawful, the requirement must satisfy each component of the test. If the requirement fails any part of the test, the exaction is unlawful and the municipality may not impose the requirement.

Here, the Rigbys primarily contend that the required improvements fail the rough proportionality test because the subdivision already has sufficient frontage and access to Hollow Road and the cost and extent of required improvements exceed the impacts of adding a single residence. They argue that the City relies on broad community benefits, such as safety and beautification, rather than mitigating specific impacts caused by adding a single residential lot.

Moreover, the Rigbys argue the requirements would create an "isolated segment" of urban infrastructure. Hollow Road in this area consists of a largely undeveloped shoulder, has no adjacent improvements to connect to, and lacks a funded plan for upgrades, so the required improvements will not function as part of a system.

For its part, the City asserts that requiring dedication and improvement of the subdivision's entire frontage is lawful because the City is pursuing legitimate government interests, which include providing infrastructure for pedestrian safety and accessibility, stormwater management, soil protection, and neighborhood beautification.

The City further contends the conditions are proportionate because the improvements are entirely on-site improvements that will benefit both resulting lots economically and from the standpoint of providing safety and access.

II. The Scope of the Proposed Development Frames the Question of Impact

Before analyzing nexus and proportionality, we must first establish the project's scope to determine its impact. The plain language¹ of Utah Code Section 10-20-911, which governs the extent to which a municipality may impose an exaction on development, states that a “municipality may impose an exaction...*on development proposed in a land use application...*” (emphasis added). Accordingly, a municipality may only impose an exaction that offsets the impact of development proposed in the applicant’s application. Answering the threshold question, “What development does the current land use application propose?” defines the proposal's scope and identifies the specific impacts the City may offset through the rough proportionality test.

¹ See Utah Code § 10-20-901(1) (“A land use authority shall apply the plain language of land use regulations.”)

Here, the Rigbys' application proposes the addition of one additional building lot to accommodate a new single-family residence. The City may therefore only address the impact of the additional building lot when imposing conditions on the proposed development.

With the issue now appropriately framed, we consider whether the City's condition to dedicate and install improvements along the entire frontage of the proposed two-lot subdivision satisfies the constitutional rough proportionality analysis and constitutes a lawful development exaction.

III. The City's Conditions Fail the Rough Proportionality Test Considering the Proposed Development Scope

A. Essential Link

Both parties appear to agree that the City requirement satisfies the essential link component of the rough proportionality analysis. Providing roads, pedestrian walkways, stormwater facilities, and associated infrastructure all represent legitimate public land use interests. "In order for a government to be effective, it needs the power to establish...public thoroughways...for the convenience and safety of the public." *Carrier v. Lindquist*, 2001 UT 105, ¶ 18. Therefore, the City's requirement appropriately establishes an essential link.

B. The Nature Aspect

The City's requirement to dedicate and improve frontage for both the lot with the existing residence and the lot on which a new residence will be built fails the *nature* aspect of the rough proportionality test.

This part of the test is articulated in terms of a problem and a solution. The exaction must solve a problem the development presents. The proposed two-lot subdivision creates a net impact of just one additional residential lot. Because the existing single-family home will remain on one of the lots as is, the development effectively adds only one new residence.

Since the Rigbys' land use application proposes one new lot and one additional residence, the City may only offset the impact of the new development. Requiring anything more would offset more than the proposed development's impacts. In other words, it would address a problem that does not need to be solved and therefore fails the *nature* aspect of the test.

The City had the opportunity to exact necessary public contributions for the existing residential structure when that development activity was originally proposed and constructed. Whether the City chose not to impose certain exactions at that time, or development standards have simply changed since then, it cannot impose current standards on the already existing development now. If the City wants the existing development to match the public improvements required for the new development, it must use public funds to build them and negotiate in good faith or exercise eminent domain to acquire the necessary right-of-way. Ultimately, the City cannot force a developer to bear a broader public burden beyond the immediate impact of the proposed development.

C. The Extent Aspect

In line with the reasoning above, the City's requirement also necessarily fails the *extent* aspect of the rough proportionality test. The *extent* aspect dictates that the City may only exact contributions equivalent to the cost to the City to assuage the impact created by the development. Since the Rigbys' development proposal adds one new residential lot to the City, the City may only exact contributions and costs equivalent to addressing the impacts of one additional lot, not two.

Accordingly, because the City's proposal fails both the *nature* and *extent* aspects of the rough proportionality test, the City may not condition approval of the Rigby's proposal on improving the frontage of the entire two-lot subdivision. To comply with the constitutional rough proportionality test, the City may only require dedication and improvements to serve the lot on which the new residence will be built.

CONCLUSION

The exaction required by Nibley City for the Rigbys to dedicate and improve the entire frontage of their two-lot subdivision constitutes an unlawful development exaction. Because the proposed subdivision creates a net impact of just one additional residential lot, the City may only impose exactions that offset the specific impacts of that single new residence.

While the City's requirements establish an essential link to a legitimate public interest, conditioning the approval on improving the frontage for both the existing home and the new lot fails both the *nature* and *extent* aspects of the rough proportionality test. Consequently, to comply with constitutional and statutory standards, the City may only require right-of-way dedication and frontage improvements that serve the newly created lot on which the new residence will be built.



Jordan S. Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

NOTE:

This is an advisory opinion as defined in § 13-43-205 of the Utah Code. It does not constitute legal advice and is not to be construed as reflecting the opinions or policy of the State of Utah or the Department of Commerce. The opinions expressed are arrived at based on a summary review of the factual situation involved in this specific matter and may or may not reflect the opinion that might be expressed in another matter where the facts and circumstances are different or where the relevant law may have changed.

While the author is an attorney and has prepared this opinion in light of his understanding of the relevant law, he does not represent anyone involved in this matter. Anyone with an interest in these issues who must protect that interest should seek the advice of his or her own legal counsel and not rely on this document as a definitive statement of how to protect or advance his interest.

An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to a dispute involving land use law. If the same issue that is the subject of an advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion, the substantially prevailing party on that cause of action may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution. Additionally, a civil penalty may also be available if the court finds that the opposing party—if either a land use applicant or a government entity—knowingly and intentionally violated the law governing that cause of action.

Evidence of a review by the Office of the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action, except in small claims court, a judicial review of arbitration, or in determining costs and legal fees as explained above.

The Advisory Opinion process is an alternative dispute resolution process. Advisory Opinions are intended to assist parties to resolve disputes and avoid litigation. All of the statutory procedures in place for Advisory Opinions, as well as the internal policies of the Office of the Property Rights Ombudsman, are designed to maximize the opportunity to resolve disputes in a friendly and mutually beneficial manner. The Advisory Opinion attorney fees and civil penalty provisions, found in § 13-43-206 of the Utah Code, are also designed to encourage dispute resolution. By statute they are awarded in very narrow circumstances, and even if those circumstances are met, the judge maintains discretion regarding whether to award them.

Re: Public Hearing Comment 4150 Hollow Road

From Marie Rigby <mrigby190@gmail.com>

Date Sun 7/26/2026 11:07 AM

To Talon Bigelow <talonb@nibleycity.gov>



External (mrigby190@gmail.com)

[Graymail](#) [Spam](#) [Phish](#) [More...](#) [FAQ](#)

No, I think Mike will make his own comment at the meeting.

Thanks,

Marie

On Wed, Jul 22, 2026, 12:19 PM Talon Bigelow <talonb@nibleycity.gov> wrote:

Hello Michael and Marie,

Thank you for sending in your emailed public comments. It will be included in the record copy of the meeting. I have also distributed it to our Nibley City Planning and Zoning Commissioners for consideration. Would you like to have your written comments read aloud during the public comment portion of the meeting?

Best Regards,

Talon Bigelow

Assistant City Recorder | Nibley City
talonb@nibleycity.gov | 435-752-0431 ext. 101
[455 W 3200 S, Nibley UT 84321-6337](#)

From: Marie Rigby <mrigby190@gmail.com>

Sent: Tuesday, July 21, 2026 9:19 PM

To: Talon Bigelow <talonb@nibleycity.gov>

Subject: Public Hearing Comment 4150 Hollow Road

Dear Nibley City Planning and Zoning Commission,

We respectfully request an exception to the requirement to install curb, gutter, and sidewalk as part of our two-lot subdivision at [4150 Hollow Road](#).

Hollow Road does not currently have sidewalks, and there are no plans for sidewalks along this section of the road. Installing a short section of curb, gutter, and sidewalk on our property would not connect to any existing sidewalk or provide a continuous pedestrian path.

Our request is simply to match the existing character of Hollow Road and the surrounding properties. Since Hollow Road is already designated as a recreational road, we believe the current roadway is appropriate for the area.

Thank you for your time and consideration. We respectfully ask for your support in approving this exception.

Sincerely,

Michael and Marie Rigby

Re: July 30th Planning and zoning commission meeting comment

From Talon Bigelow <talonb@nibleycity.gov>
Date Wed 7/29/2026 12:00 PM
To Michael Rigby <mikerigby16@gmail.com>
Cc Marie Rigby <mrigby190@gmail.com>

Hello Michael,

Hello Michael and Marie,

Thank you for sending in your emailed public comments. It will be included in the record copy of the meeting. I have also distributed it to our Nibley City Planning and Zoning Commissioners for consideration. Per your request, your comments will be read aloud during the public hearing portion of the meeting.

Best Regards,

Talon Bigelow

Assistant City Recorder | Nibley City
talonb@nibleycity.gov | 435-752-0431 ext. 101
455 W 3200 S, Nibley UT 84321-6337

From: Michael Rigby <mikerigby16@gmail.com>
Sent: Tuesday, July 28, 2026 9:36 PM
To: Talon Bigelow <talonb@nibleycity.gov>
Cc: Marie Rigby <mrigby190@gmail.com>
Subject: July 30th Planning and zoning commission meeting comment



Caution: External (mikerigby16@gmail.com)

Sensitive Content, First-Time Sender [Details](#)

[Safe](#) [Spam](#) [Phish](#) [More...](#) [FAQ](#)

My name is Michael Rigby, and I am the applicant for the 4150 Hollow Road Subdivision.

First, thank you to Staff and the Commission for considering our request. We appreciate Staff's recommendation to allow the exception to the curb, gutter, sidewalk, and park strip requirements.

We understand the City's code allows the Commission to require a fee-in-lieu, but the ordinance states the Commission **may** require a fee, not that it must. We believe this situation warrants consideration of whether a fee is appropriate at all.

Staff has acknowledged that a sidewalk in this location has limited utility today and would be more appropriately constructed as part of a larger future streetscape project. At the same time,

we are not aware of any funded project, construction schedule, or adopted plan for sidewalks along Hollow Road.

It is also worth noting that a significant portion of Hollow Road is surrounded by Rural Estate zoning, where the City's development regulations recognize a more rural character and generally do not require the same curb, gutter, and sidewalk improvements found elsewhere in the City. Given that context, and the lack of existing or planned sidewalk infrastructure along Hollow Road, we believe the Commission should carefully consider whether a fee-in-lieu is necessary or appropriate in this case.

If there is no identified project, we would respectfully ask what specific improvement this fee is intended to fund and how it relates to the impact of a subdivision that creates only one additional home.

Requiring a single homeowner to prepay for an unfunded future improvement appears difficult to justify without additional information.

For those reasons, we respectfully request approval of the exception without the fee-in-lieu requirement.

Thank you for your time and consideration.

Michael Rigby

Please have this read at the meeting on Thursday July 30th.

Nibley City Council meeting public statment

From Michael Rigby <mikerigby16@gmail.com>

Date Wed 8/5/2026 4:25 PM

To Talon Bigelow <talonb@nibleycity.gov>

Cc Levi Roberts <levir@nibleycity.gov>; Marie Rigby <mrigby190@gmail.com>



Caution: External (mikerigby16@gmail.com)

Sensitive Content [Details](#)

[Safe](#) [Spam](#) [Phish](#) [More...](#) [FAQ](#)

Talon,

A couple of questions and items.

1. Is there any way to be moved up in the city council agenda?
2. Is it too late to send a public statement? It does not need to be read, but I would like it available to the council members if not read:

Let me know, and thank you! See Statement below:

Good evening Mayor and Council Members,

My name is Michael Rigby, and I am the applicant for the 4150 Hollow Road Subdivision.

First, I would like to thank the Council, Staff, and Planning Commission for the time and consideration you have given this request.

Our request has been consistent throughout this process. We are asking for an exception from the curb, gutter, sidewalk, and park strip requirements because those improvements raise some concerns about the utility at this location.

Hollow Road has historically maintained a rural character, and much of the surrounding area has developed without curb, gutter, and sidewalk improvements. There is currently no connected sidewalk network along this section of Hollow Road, no funded construction project, and no identified timeline for future improvements.

During discussions throughout this process, the primary question has not been when a sidewalk should be built, but whether one is appropriate for this corridor at all. Staff has acknowledged that a sidewalk in this location has limited utility, and we agree that constructing a short isolated segment would provide little public benefit.

This subdivision creates only one additional residential lot. The proposed exception does not eliminate any existing sidewalk connection, create a gap in an established pedestrian network, or prevent future improvements should the City ever determine they are necessary.

We understand the Planning Commission's desire to recommend a fee-in-lieu. However, if the improvements themselves are not warranted at this location, we respectfully question the need for either construction of the improvements or payment for those improvements.

We appreciate the Council's willingness to review the legal and practical issues associated with the proposed fee-in-lieu condition. Based on the circumstances of this property, the rural character of Hollow Road, and the limited impact of a single additional residence, we respectfully request approval of the development agreement with the requested exception and without the fee-in-lieu requirement.

Thank you for your time, consideration, and service to the community.

Michael Rigby

Agenda Item #11

Description	Discussion and Consideration: Ordinance 26-13—Amending NCC 19.24.150 Permitted Signs, Including Provisions Related to Political and Temporary Signage, Setbacks and Permit Requirements (First Reading)
Presenter	Levi Roberts, City Planner
Planning Commission Recommendation	Approve Ordinance 26-13—Amending NCC 19.24.150 Permitted Signs, Including Provisions Related to Political and Temporary Signage, Setbacks and Permit Requirements
Staff Recommendation	Approve Ordinance 26-13—Amending NCC 19.24.150 Permitted Signs, Including Provisions Related to Political and Temporary Signage, Setbacks and Permit Requirements with the following condition: • Remove amendments to section (P)(2), which provides an exception for temporary signage advertising City-sponsored or City-approved events to a prohibition of placing unauthorized signs in the park strip
Reviewed By	Justin Maughan, City Manager Larry Jacobsen, Mayor Levi Roberts, City Planner Planning Commission

Background

During the 2026 Utah State Legislative Session, HB 33 was passed, which among other provisions, prohibits municipalities from prohibiting a property owner or lawful occupant of property adjacent to a park strip from posting a political sign on the park strip. In addition, a necessary amendment to come into compliance with this restriction, Staff is recommending revisions to the Sign Code, including:

1. Legal review to ensure there are no provisions which conflict with the content-neutrality provision established by Reed v. Town of Gilbert case.
2. Updated restrictions on temporary signage.
3. Referencing building code for which signs require a building permit, rather than specifying by City Code.
4. Reduced sign setback requirement (10' to 3')
5. establish sign permit that may be reviewed administratively by City Staff, rather than a conditional use permit.
6. Removing sexually oriented business restriction on EMD signs as it is a content-neutrality restriction subject to strict scrutiny.

There is one provision that Staff is recommending differently from the version that Planning Commission is recommending, which retains a prohibition on placing unauthorized signs in the public right-of-way and does not grant a special exception for

signs which advertise city-sponsored events.

ORDINANCE 26-13

AMENDING NCC 19.24.150 PERMITTED SIGNS, INCLUDING PROVISIONS RELATED TO POLITICAL AND TEMPORARY SIGNAGE, SETBACKS AND PERMIT REQUIREMENTS

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

WHEREAS, During the 2026 Utah State Legislative Session, HB 33 was passed, which among other provisions, prohibits municipalities from prohibiting a property owner or lawful occupant of property adjacent to a park strip from posting a political sign on the park strip; and

WHEREAS, Nibley City promotes the orderly, safe development of signage and effective regulation of newly constructed signage.

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

1. The attached amendments to Nibley City Code 19.24.150 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 ____ DAY OF _____ 20____.

Larry Jacobsen, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

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19.24.150 Permitted Signs

A. Applicability: The signs described in this section shall be allowed as indicated in the city. Any sign not specifically permitted by this section is prohibited.

B. Definitions:

AWNING SIGN: A roofed structure, constructed of fabric, metal, or other appropriate materials placed so as to extend outward from the building, providing a protective shield for doors, windows, and other openings in the building, with supports extending back to the building, supported entirely by the building.

BILLBOARD/OFF PREMISES SIGN: An advertising sign on premises other than that occupied by the business referred to in the sign.

BILLBOARD/ON PREMISES SIGN: An advertising sign located on the premises occupied by the business referred to in the sign.

BUSINESS SIGN: A sign identifying a commercial or industrial business on the same premises as the sign by name and/or logo. Business sign types are ground, monument, nameplate, projecting, roof, wall and billboard/on-premises signs. Business signs must be removed within 30 days of when a company goes out of business.

ELECTRONIC MESSAGE DISPLAY (EMD): A sign or portion thereof capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means. See subsection L of this section for further EMD regulations.

FLATSIGN: A sign erected parallel to and attached to the outside of a building and extending not more than twenty-four inches (24") from such wall with messages or copy on the face side only. Signs flat against buildings or other structures will be allowed to extend two feet (2') above the roof lines or parapet walls of the building. When a building has more

than one level, the wall on which the sign is installed will govern.

IDENTIFICATION SIGN: A sign displayed to indicate the name or nature of buildings or uses, other than commercial or industrial uses, located upon the same premises as the sign, i.e., schools, hospitals, churches, etc.

MAXIMUM HEIGHT: The distance from the ground supporting the sign to the highest point of the sign area. A landscape berm or other structure erected to support the sign shall be measured as part of the height. If the street to which the sign is oriented is higher than the grade at the base of the sign, then the street elevation shall be used in determining the permitted height. A roof-like structure may be added that extends beyond the maximum sign area, provided that no advertising is contained therein and that it does not increase the height more than 25%.

MONUMENT SIGN: On-premises or identification signs, the entire bottom of which is in contact with or closer than three feet (3') to the ground. Maximum height shall be five feet (5') and be incorporated into some form of landscape design scheme or planter box.

NAMEPLATE SIGN: A sign indicating the name and/or occupation of a person or persons residing on the same premises or legally occupying the same premises, or indicating a home occupation legally existing on the same premises as the sign. Nameplate signs shall be attached to the house or building to which they pertain.

POLITICAL SIGN: any sign that advocates the election or defeat of a candidate for public office or the approval or defeat of a ballot proposition.

PORTABLE OR A-FRAME SIGN: Any sign that is not permanently attached to the ground or a building, designated to be transported on wheels or other means, signs converted to A-frame or T-frame or signs attached to, painted on or supported by stationary vehicles or trailers, which are visible from a public street and have the express purpose of advertising a business, product or service. Such signs are considered temporary signage and must not obstruct sidewalks or constitute a traffic hazard.

PROJECT SIGN: A permanent sign identifying an area of distinct character under multiple ownership such as a residential neighborhood, shopping center or business park. All project signs are subject to design review.

PROJECTING SIGN: A sign attached to a building or other structure and extending in whole or in part more than twenty four inches (24") beyond any wall of the building or structure. The sign may not project above the roof line or tallest part of the structure.

PROPERTY SIGN: A sign related to the property upon which it is located and offering such property for sale or lease, or announcing improvements to the site during construction of the project. Property signs may also be used to warn against trespassers.

PUBLIC NECESSITY SIGNS: A sign informing the public of any danger or hazard existing on or adjacent to the premises on which the sign is located.

SERVICE SIGN: A sign which is incidental to a use lawfully occupying the property upon which it is located, and which sign is necessary to provide information to the public, such as direction to parking lots, location of restrooms, sale of agricultural products produced on the premises, and may bear, as an incidental part of the sign, the name, address or trademark of the persons furnishing such sign to the owner of the premises.

SIGN AREA: The area comprising the message portion of a sign, not including the supporting structure. When computing the area of sign background, only the face or faces, from one direction at one time, shall be considered. It is computed by measuring the area enclosed by straight lines drawn around the extremities of the text or graphics.

STREET BANNER SIGN: A fabric sign suspended across a city street or hanging from a building or other fixture at the side of or adjacent to the road right of way. In addition to private banners, banners may advertise a state-, county- or city-sponsored event. Approval must be granted by the city before installation.

TEMPORARY SIGN: Any sign, banner, pennant, or advertising display constructed of paper, cloth, canvas, light fabric, cardboard, wallboard or other light materials, with or without light frames, intended to be displayed outdoors for no more than ninety (90) days and not permanently affixed to the ground or building. Temporary signs associated with an event must be removed within forty-eight(48) hours of the event for which it is erected.

WALL SIGN: A sign that is either painted on a wall or its facing, or is painted in such a way that it gives the visual appearance of being painted on a wall or facing by not having a frame or separation from the wall or facing.

- C. Sign Permit Required: A sign permit shall be required for all signs described in section L prior to the erection, construction, reconstruction, location, relocation, placement, replacement, restoration, extension, enlargement, modification, alteration, repair or use of any sign within the City. An administrative review fee as listed on the current approved Consolidated Fee Schedule shall accompany each sign permit application. The City Planner or designee shall be the approval authority for all sign permits.
1. Application Submittal: The following materials are required to be submitted with a sign permit application:
 - a. A site plan drawn to scale indicating the location of the proposed signage, existing signage, existing and future buildings, property lines, streets, sidewalks, landscaped areas, parking areas, and driveways.
 - b. An elevation drawing of the proposed signing, including existing or future buildings that will display the attached signage, if applicable.
 - c. Any other reasonably related information deemed necessary by the City to verify compliance with Nibley City Code or Utah State Code.
- D. Illumination: All signs shall be illuminated as indicated in the table of permitted signs set forth in subsection P of this section. The source of indirect lighting shall not be visible from the street. In no case shall direct rays of light be permitted to penetrate a property in a residential zone.
- E. Maintenance:

1. All signs shall be maintained in a neat and presentable condition. Those signs damaged by conditions of weather or by accident shall be repaired within a reasonable time, or shall be replaced or removed. In the event of a dispute as to a "reasonable time" for repair, replacement or removal, the planning commission shall have authority to set a final deadline if mutual agreement is not reached with the sign owner.
 2. The removal of signs shall be at the owner's expense.
- F. Sign Requiring Building Permit: Where a building permit is required according to the adopted building code, no sign shall be erected without first obtaining the necessary building permit. The application for a permit for the construction, modification or remodeling of sign shall include a plot plan and site plan and shall meet the same document requirements as a commercial or manufacturing building. Included on the plot plan will be details of how the sign is to be firmly anchored or attached to the building or ground.
1. Construction Standards: All signs hereinafter erected in the city shall comply with the current standards of the building code, and all provisions of this title.
- G. Unsafe Signs: Any sign or portion thereof declared unsafe by the building inspector must be restored to a safe condition within thirty (30) days of mailing or otherwise giving notice of the unsafe condition or shall be removed within the same thirty (30) day period.
- H. Signs Not To Constitute A Traffic Hazard: No sign shall be erected at the intersection of any streets in such a manner as to obstruct free and clear vision; or at any location where, by reason of the position, shape or color, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device.
- I. Sign Setback: All sign bases, foundations or supporting apparatus shall be set back from the property line by at least three feet (3'). In no case shall a sign overhang onto an adjacent property or right-of-way.
- J. Business Signs In Residential Zones: Non-home occupation businesses located in residential zones may erect an unlighted business sign of maximum height of six (6) feet and maximum area of six (6) square feet. Home occupation businesses are limited to a nameplate sign.

K. Electronic Message Displays (EMDs):

1. No off-premise advertising permitted. Advertising copy may only advertise business on the same property or within the same project as the sign itself.
2. Permitted Zones: EMDs shall only be permitted in the Neighborhood Commercial (C-N), Commercial (C) and Industrial (I) zones along Highway 89/91 and Highway 165.
 - a. Where an EMD is permitted in a residential zone, such as a public school, all electronic displays shall be shut off between the hours of 10:00 p.m. and 6:00 a.m.
3. Transitions
 - a. Prohibited Transitions
 - (1) Scrolling or Travel
 - (2) Any text or graphic that "moves" or "has the appearance of movement" not specified in this section.
 - b. Permitted Transitions
 - (1) Dissolve, shall not exceed 2 seconds between individual scenes, messages, or advertisements.
 - (2) Fade shall be between one and two seconds between individual scenes, messages, or advertisements.
4. Frame Effects
 - a. Prohibited Effects
 - (1) Flashing & Blinking (a strobe effect)
 - (2) Starburst

(3) Video

(4) New frame effects not identified herein

(5) After sunset, no sign shall utilize a white background for greater than or equal to 10% of the sign area

b. Permitted Effect(s)

(1) Static image

5. Dwell Time

a. Each scene, message, or advertisement displayed on an EMD shall remain "on" and static for at least four (4) seconds.

6. Sign Brightness/Intensity: All EMDs are required to comply with the following standards:

a. EMD Sign Illumination Standards: Photocell technology is required to be properly installed for all EMDs to allow for automatic dimming of the intensity of the sign illumination and accommodate varying light conditions.

b. EMD Illumination Measurement Criteria: The illuminance of an EMD shall be measured with an illuminance (light intensity) meter set to measure foot candles accurate to at least 0.01 foot candles. Illuminance shall be measured with the EMD off, and again with the EMD displaying a white image for a full color-capable EMD, or a solid message for a single-color EMD. All measurements shall be taken perpendicular to the face of the EMD at the distance determined by the total square footage of the EMD as set forth by the following formula.

Measurement Distance = Ten times the square root of the Sign Area

For example, a sign with an area of 25 square feet shall be measured at a distance of 50 feet.

- c. EMD Illumination Limits: The nighttime difference between the off and solid-message measurements using the EMD Measurement Criteria shall not exceed 0.1 footcandles.
 - d. Dimming Capabilities: All permitted EMDs shall be equipped with a sensor or other device that automatically determines the ambient illumination and programmed to automatically dim according to ambient light conditions, or that can be adjusted to comply with the nighttime footcandle limitation.
 - e. The applicant shall be required to submit written certification that the light intensity shall not exceed the maximum levels specified in the above table and photocell dimming prior to the issuance of an EMD Sign Permit.
 - f. All EMDs are subject to inspection by City staff to determine compliance with the illuminance standards set forth above. Failure to comply with the illuminance standards set forth above will result in revocation of the EMD sign permit.
7. Sign Type/Area
- EMDs shall not solely consist of the entire sign area and the permitted size of an EMD shall not be more than:
- a. Monument signs: 66% of the permitted free-standing sign area of a monument sign; and shall not exceed twenty (20) square feet in area.
 - b. Pole Signs: Shall not exceed fifty (50) square feet in area.
 - c. No other sign type shall be permitted to have an EMD.

L. Table Of Permitted Signs:

Type Of Sign	Maximum Size (Feet)	Maximum Height (Feet)	Permitted Zones		Lighting Type	Sign Permit Required
Awning	4ft x 1 ft (1)	12	C, I, R-M		Indirect	Yes

Billboard/ off premises			None			
Billboard/ on premises	96 sq. ft. per side	18	C, I		Indirect	Yes
EMD, Pole Sign	50 sq. ft. per side	10 (min) 18 (max)	C, I (2)		Projection	Yes
EMD, Monument Sign	20 sq. ft. per side	5	C-N, C, I (2)		Projection	Yes
Flat and wall	10% of face - 5% of side	2 ft. above roof	C, I , R-M		Indirect, flood, neon	Yes
Identification	3ft x 4ft	8	All		Indirect, flood	Yes
Monument, w/o EMD	20 sq. ft.	5	All		Indirect	Yes
Nameplate	3 sq. ft.	5	All		None	No
Project	160 sq. ft. per side	10	C, I		Indirect, flood, neon	Yes
Project - Residential	40 sq. ft. per side	10	All		Indirect, flood, neon	Yes

Projecting	14 sq. ft.	18	C, I		Indirect, flood, neon	Yes
Property	32 sq. ft.	10	All		None	No
Public necessity	6 sq. ft.	5	All		None	No
Service	16 sq. ft.	6	All		Indirect	Yes
Street banner	120 sq. ft.	None	All		None	Yes
Temporary	30 sq. ft.	6	All		None	No

M. Notes:

(1) Width not to exceed windows, doors or other openings being sheltered.

(2) Allowed only along Highway 89/91 and 165.

N. Exemptions: The following shall be exempt from the provisions of this chapter so long as they do not create a traffic, pedestrian, or line-of-sight hazard:

1. Official notices authorized by a court, public body or public safety official.
2. Directional, warning or information signs authorized by a government.
3. Memorial plaques, building identification signs and building cornerstones when cut or carved into a masonry surface or when made an integral part of the building or structure.
4. The flag of a government or noncommercial institution, such as a school, and business identification flags.

5. Religious symbols and seasonal decorations provided that no traffic hazard is created.
6. Works of art containing no form of advertising.
7. Street address signs and combination nameplate and street address signs that contain no advertising copy and which do not exceed six (6) square feet in area.
8. Signs oriented only to the property on which they are located and which are not visible from the public right of way.
9. Signs in the display windows of a business which are incorporated in a display of merchandise.
10. Posting a political sign on a park strip if the person is the owner or lawful occupant of property that is adjacent to the park strip or the person posting the political sign obtains consent to post the political sign from the lawful occupant of property that is adjacent to the park strip.

P. Prohibited Signs:

1. Nonpermitted signs or posters that are visible from a public way and are affixed to walls, buildings, trees, poles, fences, bridges or other structures.
2. Signs placed on any street right of way, sidewalk, pole, bridge or tree, unless specifically permitted herein or temporary signage advertising City-sponsored or City-approved events.
3. Portable signs except those allowed as temporary signs.
4. Signs whose lighting, location or appearance would cause such signs to have the appearance of traffic safety signs and lights, or municipal vehicle warnings.
5. Any sign attached to or placed on a vehicle or trailer that is parked on public or private property or driven on public streets, except for signs meeting the following:

- a. The primary purpose of such a vehicle or trailer is not the display of signs.
 - b. The signs are magnetic, decals or painted upon an integral part of the vehicle or equipment.
 - c. The vehicle or trailer is in operating condition, currently registered and licensed to operate on public streets, and actively used or available for use in the daily function of the business to which such signs relate.
- 6. Roof signs.
 - 7. Animated signs.
 - 8. Strobe lights and flashing lights.
 - 9. Any sort of sign used to advertise or display any visually communicated message by letter or by picture, of any kind, on any seating bench, or in direct connection with any bench unless authorized by the regional transit district.

Agenda Item #12

Description	Discussion and Consideration: Ordinance 26-12—Adopting NCC 19.50 Expiration of Inactive Applications (First Reading)
Presenter	Levi Roberts, City Planner
Planning Commission Recommendation	Approve Ordinance 26-12—Adopting NCC 19.50 Expiration of Inactive Applications
Staff Recommendation	Approve Ordinance 26-12—Adopting NCC 19.50 Expiration of Inactive Applications
Reviewed By	Justin Maughan, City Manager Larry Jacobsen, Mayor Levi Roberts, City Planner Planning Commission

Background:

Land Use applications are often initially reviewed iteratively with Staff working with the applicant to bring the application into compliance with City Code. However, there is currently a lack of clear guidelines for the expiration of applications to which applicants have not responded to comments. The purpose of the proposed ordinance is to “establish clear guidelines for the expiration of inactive land use applications to promote efficient land use planning, ensure compliance with current zoning ordinances, and balance the interests of applicants and the public.” This is necessary, as an applicant has vested rights with the ordinance adopted at the time of application. However, if a long period of time has passed without response from the applicant, the City may require a new application that needs to comply with City Code at the time of application.

The proposed ordinance establishes a deadline of 180 days for applications that fail to submit any required information or materials. Otherwise, the application will be considered expired. Applicants may request a one-time extension of 180 days from the Land Use Authority.

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ORDINANCE 26-12

ADOPTING NCC 19.50 EXPIRATION OF INACTIVE APPLICATIONS

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

WHEREAS, Nibley City establishes clear guidelines for the expiration of inactive land use applications to promote efficient land use planning, ensure compliance with current zoning ordinances, and balance the interests of applicants and the public.

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

1. The attached Nibley City Code 19.50 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 ____ DAY OF _____ 20____.

Larry Jacobsen, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

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19.50: Expiration of Inactive Applications

A. Purpose and Intent

The purpose of this section is to establish clear guidelines for the expiration of inactive land use applications to promote efficient land use planning, ensure compliance with current zoning ordinances, and balance the interests of applicants and the public.

B. Inactive Applications

1. A land use application shall be deemed inactive if the applicant fails to submit any of the required documentation, information, or materials outlined in a Staff, Planning Commission or City Council review for a period exceeding 180 calendar days.
2. Upon expiration, the application shall be considered withdrawn, and the applicant must submit a new application, including all applicable fees.

A. Extensions

1. Applicants may request a one-time extension of up to 180 calendar days by submitting a written request to the Land Use Authority before the expiration date, demonstrating good cause for the delay.
 2. The Land Use Authority shall have discretion to grant or deny the extension based on the circumstances provided by the applicant.
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