NIBLEY CITY COUNCIL MEETING AGENDA
Thursday, May 28, 2020 – 6:30 p.m.

In accordance with Utah Code Annotated 52-4-207 and Nibley City Resolution 12-04, this meeting may be conducted electronically. The anchor location for the meeting will be Nibley City Hall 455 West 3200 South, Nibley, Utah

1. Opening Ceremonies (Councilmember Beus)
2. Call to Order and Roll Call (Chair)
3. Approval of the Previous Meeting Minutes and Current Agenda (Chair)
4. Public Comment Period[1] (Chair)
5. Planning Commission Report

6. **Department Report** – Recreation: Heritage Days Update

7. **Presentation** – Cache Valley Transit District

8. **Discussion & Consideration** – Resolution 20-05: A Resolution Regulating the Use of Fireworks within Nibley City Limits

9. **Discussion & Consideration** – Resolution 20-06: 2019 Municipal Wastewater Planning Program Report

10. **Discussion & Consideration** – Ordinance 20-10: An Ordinance of the Nibley City Council Creating a Community Reinvestment Agency (First Reading)

11. **Discussion & Consideration** – Ordinance 20-11: An Ordinance Providing for the Compensation of Elected and Statutory Officers of Nibley City (First Reading)

12. **Discussion & Consideration** – Ordinance 20-12: An Ordinance Granting Rocky Mountain Power A Power Franchise (First Reading)

13. **Council and Staff Reports**

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.

[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*

Nibley City Council
Agenda Report for
May 28, 2020

Agenda Item #6

Description	**Department Report** – Recreation: Heritage Days Update
Department	Recreation
Presenter	Chad Wright, Recreation Director
Recommendation	Receive the presentation. Make Comments. Ask questions.
Reviewed By	Mayor, City Manager, Recreation Director, PARC

Background

Department staff provide periodic reports to the City Council to provide updates on initiatives and projects. The Recreation Director and the Park and Recreation Committee will provide an update on recreation operations, including plans for Heritage Days.

Agenda Item #7

Description	**Presentation** – Cache Valley Transit District
Department	City Council
Presenter	Gregory Shannon, Nibley City Representative on the CVTD
Recommendation	Receive the presentation. Make Comments. Ask questions.
Reviewed By	CVTD

Background

The Nibley City Council has a citizen representative who serves on the board of directors for the Cache Valley Transit District. He provides periodic updates to the council on the operations of CVTD and how changes to transit services might affect Nibley residents.

Agenda Item #8

Description	**Discussion & Consideration** – Resolution 20-05: A Resolution Regulating the Use of Fireworks Within Nibley City Limits
Department	City Council, Fire Department
Presenter	David Zook, City Manager
Recommendation	Make a motion to approve Resolution 20-05: A Resolution Regulating the Use of Fireworks Within Nibley City Limits, and waive second reading
Reviewed By	Mayor, City Manager, City Planner, Hyrum Fire Chief, Cache County Fire Chief

Background:

Dry summertime conditions increase fire hazards and necessitate special fire hazard mitigation measures. Utah Code Sections 15A-5-202.5 and 53-7-225 provide that municipalities may regulate and prevent the discharge of fireworks in certain areas with hazardous environmental conditions. New statutory requirements require the County to issue a map by June 1 of each year showing the areas where fireworks are prohibited. The recommendation from staff and Mayor Dustin is to continue the City's practice if prohibiting fireworks east of SR 165/Main Street in Nibley.

RESOLUTION 20-05

A RESOLUTION REGULATING THE USE OF FIREWORKS WITHIN NIBLEY CITY

WHEREAS, dry summertime conditions increase fire hazards and necessitate special fire hazard mitigation measures; and

WHEREAS, Utah Code Annotated, Sections 15A-5-202.5 and 53-7-225 provide that municipalities may regulate and prevent the discharge of fireworks in certain areas with hazardous environmental conditions; and

WHEREAS, the Nibley City Council finds that it is in the interest of the health, safety and welfare of the inhabitants of Nibley City to prohibit the use of fireworks in areas that are more prone to dangerous and deadly wildfires.

NOW, THEREFORE, BE IT RESOLVED, by the Nibley City Council that use of fireworks east of SR 165/Main Street in Nibley is prohibited until further notice.

This resolution shall take effect immediately upon passage.

Dated this _______ day of ______________, 2020.

____
Shaun Dustin, Mayor

ATTEST: _____________________________________
David Zook City Recorder

Agenda Item #9

Description	**Discussion & Consideration** – Resolution 20-06: 2019 Municipal Wastewater Planning Program Report
Department	Public Works - Sewer
Presenter	Justin Maughan, Public Works Director
Recommendation	Move to approve Resolution 20-06: 2019 Municipal Wastewater Planning Program Report
Reviewed By	City Manager, Public Works Director

Background:

The State Division of Environmental Quality requires municipalities to complete a survey each year to report on the status of the City's wastewater system. The questions in the survey are focused on the financial health, as well as the actual health of the system.

The Sewer Department's finances are strong, and the CIty does not anticipate any major expenses for the collection system in the immediate future. With the ongoing talks with Hyrum and Millville, there is the potential to be significant new expenses, depending on the outcome of those talks. It is the opinion of the Public Works Department that the collection system itself is in great shape. Nibley has been able to avoid many of the problems that other cities face, primarily due to the young age of Nibley's sewer system. Staff routinely inspect and clean the system with the equipment that has been purchased over the last few years. At this time, staff largely focuses on eliminating infiltration into the system, as Nibley must pay Logan for every drop of water that goes into the system.

RESOLUTION 20-06

MUNICIPAL WASTEWATER PLANNING PROGRAM RESOLUTION

WHEREAS, the Utah Division of Water Quality requests that municipalities annually review wastewater planning; and

WHEREAS, Nibley City has completed and reviewed the attached Municipal Wastewater Planning Program Report of 2019; and

WHEREAS, Nibley City has taken all appropriate actions necessary to maintain effluent requirements contained in the UPDES Permit:

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

The attached Municipal Wastewater Planning Program Report for 2019 is hereby adopted.

Dated this _______ day of ______________, 2020.

____
Shaun Dustin, Mayor

ATTEST: _____________________________________
David Zook City Recorder

Municipal Wastewater Planning Program (MWPP)
Annual Report
for the year ending 2019
NIBLEY CITY

Thank you for filling out the reqested information. Please let DWQ know when it is approved by the Council.

Please download a copy of your form by clicking "Download PDF" below.

Below is a summary of your responses

Download PDF

SUBMIT BY APRIL 15, 2020

Are you the person responsible for completing this report for your organization?

- (selected) **Yes**
- No

This is the current information recorded for your facility:

Facility Name:	NIBLEY CITY
Contact - First Name:	Justin
Contact - Last Name:	Maughan
Contact - Title	Public Works Dir.

Contact - Phone:	435-770-0727
Contact - Email:	jm@nibleycity.com

Is this information above complete and correct?

- (selected) **Yes**
- No

Your wastewater system is described as Collection & Financial:

Classification: COLLECTION
Grade: II

(if applicable)

Classification: -
Grade: -

Is this correct?
WARNING: If you select 'no', you will no longer have access to this form upon clicking Save & Continue. DWQ will update the information and contact you again.

- (selected) **Yes**
- No

Click on a link below to view examples of sections in the survey:
(Your wastewater system is described as Collection & Financial)

MWPP Collection System.pdf
MWPP Discharging Lagoon.pdf
MWPP Financial Evaluation.pdf
MWPP Mechanical Plant.pdf
MWPP Non-Discharging Lagoon.pdf

Will multiple people be required to fill out this form?

Yes

No

Please update the information for the person in charge of filling out each section.

	Email ex. john@email.com	Name (first and last)	Notes These notes will be sent in the invite email
Financial Evaluation	jm@nibleycity.com	Justin Maughan	
Collection System	jm@nibleycity.com	Justin Maughan	
Review, sign and submit	jm@nibleycity.com	Justin Maughan	

Click 'Yes' to send an email to each responsible person with the notes you've included (if any) with a link to the forms and to receive updates

Yes, send the link to this form for the next person to fill out.

Continue filling out the form myself and send the link to others later.

Financial Evaluation Section

Form completed by:

Justin Maughan

Part I: GENERAL QUESTIONS

	Yes	No
Are sewer revenues maintained in a dedicated purpose enterprise/district account?	◉	○

	Yes	No
Are you collecting 95% or more of your anticipated sewer revenue?	◉	○
Are Debt Service Reserve Fund[6] requirements being met?	◉	○

What was the User Charge[16] for 2019?

51.00

Do you have a water and/or sewer customer assistance program * (CAP)?

○ Yes

◉ **No**

Part II: OPERATING REVENUES AND RESERVES

	Yes	No
Are property taxes or other assessments applied to the sewer systems[15]?	○	◉

	Yes	No

Are sewer revenues[14] sufficient to cover

	Yes	No
operations & maintenance costs[9], and repair & replacement costs[12] (OM&R) at this time?	◉	○
Are projected sewer revenues sufficient to cover OM&R costs for the ***next five years***?	◉	○
Does the sewer system have sufficient staff to provide proper OM&R?	◉	○
Has a repair and replacement sinking fund[13] been established for the sewer system?	◉	○
Is the repair & replacement sinking fund sufficient to meet anticipated needs?	◉	○

Part III: CAPITAL IMPROVEMENTS REVENUES AND RESERVES

	Yes	No
Are sewer revenues sufficient to cover all costs of current capital improvements[3] projects?	◉	○
Has a Capital Improvements Reserve Fund[4] been established to provide for anticipated capital improvement projects?	○	◉
Are projected Capital Improvements Reserve Funds sufficient for the ***next five years***?	◉	○
Are projected Capital Improvements Reserve Funds sufficient for the ***next ten years***?	○	◉
Are projected Capital Improvements Reserve Funds sufficient for the ***next twenty years***?	○	◉

Part IV: FISCAL SUSTAINABILITY REVIEW

	Yes	No
Have you completed a Rate Study[11] within the	◉	○

	Yes	No
last five years?		
Do you charge Impact fees[8]?	○	◉

	Yes	No
Have you completed an Impact Fee Study in accordance with UCA 11-36a-3 within the last five years?	○	◉
Do you maintain a Plan of Operations[10]?	◉	○
Have you updated your Capital Facility Plan[2] within the last five years?	◉	○

	Yes	No
Do you use an Asset Management[1] system for your sewer systems?	○	◉

	Yes	No
Do you know the total replacement cost of your sewer system capital assets?	○	◉

	Yes	No
Do you fund sewer system capital improvements annually with sewer revenues at 2% or more of the total replacement cost?	○	◉

at 2% or more of the total replacement cost?

	Yes	No
What is the sewer/treatment system annual asset renewal* cost as a percentage of its total replacement cost?	○	◉

What is the sewer/treatment system annual asset renewal* cost as a percentage of its total replacement cost?

0

Part V: PROJECTED CAPITAL INVESTMENT COSTS

Cost of projected capital improvements

	Cost	Purpose of Improvements		
	Please enter a valid numerical value	Replace/Restore	New Technology	Increase Capacity
2020		☐	☐	☐
2020 thru 2024		☐	☐	☐
2025 thru 2029		☐	☐	☐
2030 thru 2034	$2,500,000	☐	☐	☑
2035 thru 2039		☐	☐	☐

This is the end of the Financial questions

To the best of my knowledge, the Financial section is completed and accurate.

☑ **Yes**

Collection System Section

Form completed by:
May Receive Continuing Education /units (CEUs)

Justin Maughan

Part I: SYSTEM DESCRIPTION

What is the largest diameter pipe in the collection system (diameter in inches)?

21

What is the average depth of the collection system (in feet)?

8'

What is the total length of sewer pipe in the system (length in miles)?

22

How many lift/pump stations are in the collection system?

3

What is the largest capacity lift/pump station in the collection system (design capacity in gallons per minute)?

1688

Do seasonal daily peak flows exceed the average peak daily flow by 100 percent or more?

- ○ Yes
- ◉ **No**

What year was your collection system first constructed (approximately)?

2004

In what year was the largest diameter sewer pipe in the collection system constructed, replaced or renewed? (If more than one, cite the oldest)

2004

PART II: DISCHARGES

How many days last year was there a sewage bypass, overflow or basement flooding in the system due to rain or snowmelt?

0

How many days last year was there a sewage bypass, overflow or basement flooding due to equipment failure (except plugged laterals)?

0

The Utah Sewer Management Program defines two classes of sanitary sewer overflows (SSOs):

Class 1- a Significant SSO means a SSO or backup that is not caused by a private lateral obstruction or problem that:

(a) affects more than five private structures;

(b) affects one or more public, commercial or industrial structure(s);
(c) may result in a public health risk to the general public;
(d) has a spill volume that exceeds 5,000 gallons, excluding those in single private structures; or
(e) discharges to Waters of the state.

Class 2 - a Non-Significant SSO means a SSO or backup that is not caused by a private lateral obstruction or problem that does not meet the Class 1 SSO criteria.

Below include the number of SSOs that occurred in year: 2019

	Number
Number of Class 1 SSOs in Calendar year	0
Number of Class 2 SSOs in Calendar year	0

Please indicate what caused the SSO(s) in the previous question.

None

Please specify whether the SSOs were caused by contract or tributary community, etc.

None

Part III: NEW DEVELOPMENT

Did an industry or other development enter the community or expand production in the past two years, such that flow or wastewater loadings to the sewerage system increased by 10% or more?

Yes

No

Are new developments (industrial, commercial, or residential) anticipated in the next 2 - 3 years that will increase flow or BOD5 loadings to the sewerage system by 25% or more?

Yes

No

Number of new commercial/industrial connections in the last year

0

Number of new residential sewer connections added in the last year

51

Equivalent residential connections[7] served

1950

Part IV: OPERATOR CERTIFICATION

How many collection system operators do you employ?

3

Approximate population served

8000

State of Utah Administrative Rules requires all public system operators considered to be in Direct Responsible Charge (DRC) to be appropriately certified at least at the Facility's Grade.

List the designated Chief Operator/DRC for the Collection System below:

	Name First and Last Name	Grade	Email Please enter full email address
Chief Operator/DRC	Justin Pope	II	justin@nibleycity.com

List all other Collection System operators with DRC responsibilities in the field, by certification grade, separate names by commas:

	Name separate by comma
SLS[17] Grade I:	
Collection Grade I:	
Collection Grade II:	
Collection Grade III:	
Collection Grade IV:	Justin Maughan

List all other Collection System operators by certification grade, separate names by commas:

	Name separate by comma
SLS[17] Grade I:	
Collection Grade I:	
Collection Grade II:	

	Name
Collection Grade III:	Justin Johnson
	separate by comma
Collection Grade IV:	Steve Eliason
No Current Collection Certification:	Josh Herschi

Is/are your collection DRC operator(s) currently certified at the appropriate grade for this facility?

- (●) **Yes**
- ( ) No

Part V: FACILITY MAINTENANCE

	Yes	No
Have you implemented a preventative maintenance program for your collection system?	(●)	( )
Have you updated the collection system operations and maintenance manual within the past 5 years?	(●)	( )
Do you have a written emergency response plan for sewer systems?	( )	(●)
Do you have a written safety plan for sewer systems?	( )	(●)
Is the entire collections system TV inspected at least every 5 years?	( )	(●)
Is at least 85% of the collections system mapped in GIS?	(●)	( )

Part VI: SSMP EVALUATION

	Yes	No

	Yes	No
Has your system completed a Sewer System Management Plan (SSMP)?	◉	○
Has the SSMP been adopted by the permittee's governing body at a public meeting?	◉	○
Has the completed SSMP been public noticed?	◉	○
During the annual assessment of the SSMP, were any adjustments needed based on the performance of the plan?	○	◉

Date of Public Notice

01/29/2016

During 2019, was any part of the SSMP audited as part of the five year audit?

○ Yes
◉ **No**

Have you completed a System Evaluation and Capacity Assurance Plan (SECAP) as defined by the Utah Sewer Management Program?

○ Yes
◉ **No**

Part VII: NARRATIVE EVALUATION

This section should be completed with the system operators.

Describe the physical condition of the sewerage system: (lift stations, etc. included)

One Large lift station, three small lift stations, roughly 22 miles of sewer main.

What sewerage system capital improvements[3] does the utility need to implement in the next 10 years?

None

What sewerage system problems, other than plugging, have you had over the last year?

One of the three guide rails in our main lift station has shifted and needs repaired.

Is your utility currently preparing or updating its capital facilities plan[2]?

- (●) **Yes**
- ( ) No

Does the municipality/district pay for the continuing education expenses of operators?

- (●) **100% Covered**
- ( ) Partially cover
- ( ) Does not pay

Is there a written policy regarding continuing education and training for wastewater operators?

- ( ) Yes
- (●) **No**

Any additional comments?

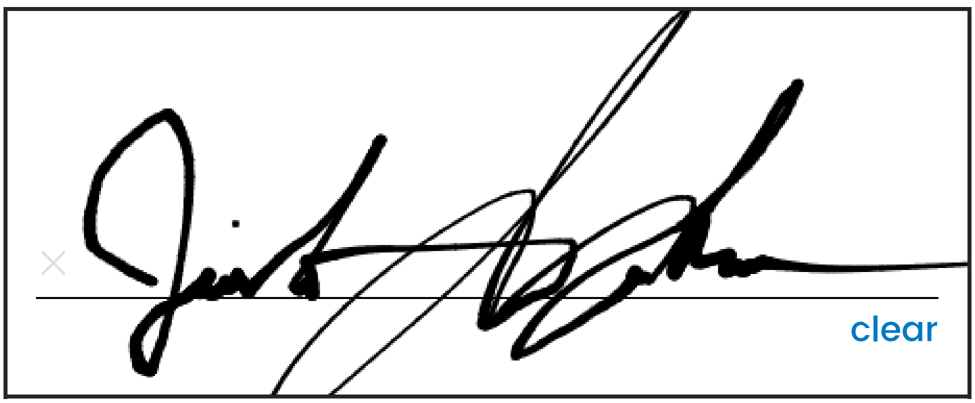
None

This is the end of the Collections System questions

To the best of my knowledge, the Collections System section is completed and accurate.

- [x] **Yes**

I have reviewed this report and to the best of my knowledge the information provided in this report is correct.



Has this been adopted by the council? If no, what date will it be presented to the council?

- ( ) Yes
- (•) **No**

What date will it be presented to the council?
Date format ex. mm/dd/yyyy

05/28/2020

Please log in.

Email

jm@nibleycity.com

PIN

••••

NOTE: This questionnaire has been compiled for your benefit to assist you in evaluating the technical and financial needs of your wastewater systems. If you received financial assistance from the Water Quality Board, annual submittal of this report is a condition of that assistance. Please answer questions as accurately as possible to give you the best evaluation of your facility. If you need assistance, please send an email to wqinfodata@utah.gov and we will contact you as soon as possible. You may also visit our Frequently Asked Questions page.

Agenda Item #10

Description	**Discussion & Consideration** – Ordinance 20-10: AN ORDINANCE OF THE NIBLEY CITY COUNCIL CREATING A COMMUNITY REINVESTMENT AGENCY (First Reading)
Department	Administration
Presenter	David Zook, City Manager
Recommendation	Move to approve Ordinance 20-10: for the first reading.
Reviewed By	Mayor, City Manager, City Attorney

Background

Malouf was founded in 2004 and moved to its current world headquarters in Nibley in 2015. Malouf has become a world leader in the furniture and bedding industry. Growing from its original two founders, Sam and Kaci Malouf, to now more than 1200 employees, including 500 with Malouf and 700 with recently acquired companies. Malouf has a presence in 22 countries. It has 3.3 million square feet of warehouse/distribution space in multiple states, sells nearly 12,000 unique products with more than 7 million products sold annually. Malouf recently acquired several other companies, including Downeast, Salt Flat and Impact Collective. Due to the company's significant growth, it is in need of a new, larger headquarters building.

Malouf has been in discussion with the State of Utah, as well as other states, about the best place for the construction of its new headquarters. Malouf was offered significant incentives to relocate out of Utah. Utah has also offered incentives to Malouf of $14 million to encourage the company to stay in Utah. The incentives from the State of Utah are contingent on Nibley also offering incentives.

Incentives offered by cities are usually provided in the form of property tax increment funding. Tax increment funds come from the new, additional property tax revenue generated by a property after it is improved. For example, before the current Malfouf building was constructed, the site was used for agricultural purposes and only generated approximately $20 per year in property taxes for Nibley City. After construction of the current building, that property tax payment to Nibley increased to approximately $20,000. This $20,000 increase in property tax revenue is referred to as the incremental growth.

If Nibley had incentivized Malouf to come to Nibley when it originally moved to Nibley, the City could have rebated some of that new tax revenue back to Malouf in order to help Malouf pay for costs associated with constructing their new facility.

Tax increment financing usually also includes contributions from county and school district property taxes. Nibley City and Malouf have been in discussions with the county and school district about participating in the financing and both agencies have verbally agreed to support the project with incentive financing. The governing bodies of both of those organizations will have to take formal action in order to officially authorize the financing.

At the May 14, 2020 City Council meeting, staff presented options for the City to incentivize Malouf's expansion in the City. The first step the City would need to take in order to provide an incentive would be to form a Community Reinvestment Agency (CRA), which is a separate legal entity, similar to the City's Municipal Building Authority. Nibley formed a Redevelopment Agency in 2008. However, no projects were ever undertaken by the agency. In addition, redevelopment laws in Utah have changed. Consequently, the City Attorney and the City's economic development and finance consultant recommend that the City reinstate or recreate the agency under current laws. In order to create the agency, the Council must adopt the proposed ordinance.

After creation of the CRA, later steps in the incentive process would include drafting and adopting an agreement between Nibley City and Malouf, which would establish the terms of the incentives, and adopting interlocal with the other taxing entities that would also participate in the incentives, including Cache County and the Cache County School District.

The ordinance directs that the agency be created, that the Mayor and City Council be the governing board of the agency, that the City Manager serve as the executive director of the agency, and that the boundaries of the agency be the same as the boundaries of the City.

ORDINANCE 20-10

AN ORDINANCE OF THE NIBLEY CITY COUNCIL CREATING A COMMUNITY REINVESTMENT AGENCY

WHEREAS under the "Limited Purpose Local Government Entities - Community Reinvestment Agency Act" found in Title 17C of the Utah Code Ann. (2019) (the "Act"), a community legislative body has authority to create a community reinvestment agency for all the purposes set forth in the Act; and

WHEREAS the Nibley City Council (the "Legislative Body") of Nibley (the "City") desires to create a community reinvestment agency as provided in Section 17C-1-201.5 of the Act, for the benefit of Nibley and its residents;

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE BODY OF NIBLEY AS FOLLOWS:

1. There is hereby created a community reinvestment agency, as defined in the Act, to be known as the Nibley Community Reinvestment Agency (the "Agency"). The Agency is given all powers, rights, authorities, and privileges provided under the Act with no limitations.
2. Unless otherwise provided in the Act: (a) the Executive Director of the Agency will be the same person who contemporaneously serves at any time, from time to time, as the City Manager of Nibley, (b) the governing board of the Agency will be comprised of the same persons who contemporaneously serve at any time, from time to time, on the Legislative Body, and (c) the boundaries of the Agency will at all times be coterminous with the boundaries of Nibley, and any change to the boundaries of Nibley at any time will automatically constitute a similar change to the boundaries of the Agency.
3. Nibley staff and consultants are directed to provide notice to the lieutenant governor, and to record with the County Recorder a certificate of creation, and to take all other steps as are necessary to carry out the creation and operation of the Agency under the Act.
4. This ordinance will take effect immediately upon publication or posting in compliance with applicable law.

APPROVED AND ADOPTED this ____ day of ____________, 20_____.

____
Shaun Dustin, Mayor

ATTEST:

____
David Zook, City Recorder

Agenda Item #11

Description	**Discussion & Consideration** – Ordinance 20-11: An Ordinance Providing for the Elected and Statutory Officers of Nibley City (First Reading)
Department	Administration
Presenter	David Zook, City Manager
Recommendation	Move to approve Ordinance 20-11: An Ordinance Providing for the Elected and Statutory Officers of Nibley City, for first reading.
Reviewed By	Mayor, City Manager, City Attorney

Background

In 2015, the City Council established a policy of adjusting elected official stipends annually at the same rate as salaries are adjusted for other employees. A 2% cost of living adjustment (COLA) is being proposed in this year's budget for employees, therefore elected official compensation is proposed to be increased by an equal amount.

The compensation of the elected and statutory officers is proposed as follows:

Office: **Proposed Salary:** **Present Salary:**
Increase:
Mayor $844/month $828/month
$16/month
Councilmember $337/month $330/month
$7/month
Treasurer $44,002 -
65,011/year $43,132-63,726/year
$870-$1,285/year

ORDINANCE 20-11

AN ORDINANCE PROVIDING FOR THE COMPENSATION OF ELECTED AND STATUTORY OFFICERS OF NIBLEY CITY

WHEREAS, elected and statutory officers are required to devote a significant amount of time and talent to the effective administration of Nibley City; and

WHEREAS, elected and statutory officers should be fairly compensated for their time and expenses; and

WHEREAS, the Nibley City Council established a policy in 2015 of annually adjusting City Council Member compensation commensurate with the cost of living adjustment provided to other City employees; and

WHEREAS, a COLA of 2% is proposed this year for city employees.

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

1. All previous salary or compensation ordinances regarding the elected and statutory officers below are hereby repealed.

2. The compensation of the elected and statutory officers shall be as follows:

Office:	**Present Salary:**	**Proposed Salary:**	**Increase:**
Mayor	$828/month	$844/month	$16/month
Councilmember	$330/month	$337/month	$7/month
Treasurer	$43,132-$63,726/yr	$44,002-$65,011/yr	$870-1,285/yr

3. Elected and statutory officers shall be paid on the same schedule as other municipal employees.

4. The compensation listed above is not inclusive of per diem, mileage, phone allowance or other expenses, which may be incurred in the course of conducting Nibley City business.

5. This ordinance shall become effective July 1, 2020.

PASSED BY THE NIBLEY CITY COUNCIL THIS _________ DAY OF __________, 2019.

____
Shaun Dustin, Mayor

ATTEST:____________________________
David Zook, City Recorder

Agenda Item #12

Description	**Discussion & Consideration** – Ordinance 20-12: An Granting Rocky Mountain Power a Power Franchise Fee (First Reading)
Department	Administration
Presenter	David Zook, City Manager
Recommendation	Move to approve Ordinance 20-12: An Granting Rocky Mountain Power a Power Franchise Fee, for first reading.
Reviewed By	Mayor, City Manager, City Attorney

Background

State laws authorize cities to charge franchise fees. Franchises are the right to use the public right-of-way for private businesses. Franchises are granted to private utility companies to use roads and other rights-of-way and easements to provide services to residents. For example, the City currently has agreements with Rocky Mountain Power which gives it permission to have power lines in these areas, with Dominion Energy to have gas lines in these areas, and with Comcast for TV/Data cables in these areas.

This agreement applies to the provision of electricity services by Rocky Mountain Power (RMP).

The City's previous agreement with RMP was approved in 1995 and expires this August. The term of this agreement would be 20 years.

The agreement has been reviewed by the city attorney and his suggested changes have been made.

The agreement includes the following key provisions:

- It grants the non-exclusive right for RMP to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines in, under, along, over and across the present and future streets, and rights-of-way, not including City parks or buildings, for the purpose of supplying and transmitting electric power to the inhabitants of the City.

- Rather than the city receiving a percentage of revenue from RMP, RMP collects a municipal energy tax and forwards those funds to the City.
- Upon written notice to RMP, the City may require the relocation of facilities located in any of the Streets in the interest of public convenience, necessity, health, safety or welfare at no cost to the City.
- RMP shall indemnify the City and maintain insurance

ORDINANCE 20-12
AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE AND GENERAL UTILITY EASEMENT TO ROCKY MOUNTAIN POWER

WHEREAS, in 1995, by Ordinance 004-95, the City of Nibley, Utah approved the current Power Franchise Agreement with Pacificorp; and

WHEREAS, the Franchise is due to expire on August 17, 2020: and

WHEREAS, Rocky Mountain Power, is a regulated public utility that provides electric power and energy to the citizens of Nibley City (the "City") and other surrounding areas;

WHEREAS, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the City;

WHEREAS, the City, pursuant to the provisions of Utah Code Ann. § 10-8-21 has the authority to regulate power line facilities within public ways and to grant to Rocky Mountain Power a general utility easement for the use thereof;

WHEREAS, the City desires to set forth the terms and conditions by which Rocky Mountain Power shall use the public ways of the City;

NOW, THEREFORE, be it ordained by Nibley City that:

SECTION 1. <u>Grant of Franchise and General Utility Easement</u>. The City hereby grants to Rocky Mountain Power the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as "Electric Facilities") in, under, along, over and across the present and future streets, alleys, and rights-of-way, not including City parks, buildings or other spaces not associated with City-owned rights-of-way (collectively referred to herein as "Public Ways") within the City, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the City and persons and corporations beyond the limits thereof.

SECTION 2. <u>Term</u>. The term of this Franchise and General Utility Easement is for Twenty (20) years commencing on the date of acceptance by the Company as set forth in Section 3 below.

SECTION 3. Acceptance by Company. Within sixty (60) days after the passage of this ordinance by the City, Rocky Mountain Power shall file an unqualified written acceptance thereof, with the City Recorder otherwise the ordinance and the rights granted herein shall be null and void.

SECTION 4. Non-Exclusive Franchise. The right to use and occupy the Public Ways of the City shall be nonexclusive and the City reserves the right to use the Public Ways for itself or any other entity that provides service to City residences; provided, however, that such use shall not unreasonably interfere with Rocky Mountain Power's Electric Facilities or Rocky Mountain Power's rights as granted herein.

SECTION 5. City Regulatory Authority. In addition to the provision herein contained, the City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Utah, the laws of Utah or City Ordinance.

SECTION 6. Indemnification. The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by Rocky Mountain Power of its Electric Facilities. Rocky Mountain Power shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of Rocky Mountain Power's use of the Public Ways within the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The City shall: (a) give prompt written notice to Rocky Mountain Power of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) permit Rocky Mountain Power to assume the defense of such claim, demand, or lien. If such defense is not assumed by Rocky Mountain Power, Rocky Mountain Power shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, Rocky Mountain Power shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers or employees.

SECTION 7. Annexation.

7.1 Extension of City Limits. Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Electrical Facilities owned, maintained, or operated by Rocky Mountain Power located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

7.2 Notice of Annexation. When any territory is approved for annexation to the City, the City shall, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to Rocky Mountain Power: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation. The notice shall be mailed to:

Rocky Mountain Power Customer Contact Center
Attn: Annexations
P.O. Box 400
Portland, Oregon 97207-0400

With a copy to:

Rocky Mountain Power
Attn: Office of the General Counsel
1407 West North Temple, Room 320
Salt Lake City, UT 84116

SECTION 8. Plan, Design, Construction and Installation of Company Facilities.

8.1 All Electrical Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and city laws, codes and regulations.

8.2 Except in the case of an emergency, Rocky Mountain Power shall, prior to commencing new construction or major reconstruction work in the Public Ways, apply for any permit from the City as may be required by the City's ordinances, which permit shall not be unreasonably withheld, conditioned, or delayed. Rocky Mountain Power will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the City, and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, Rocky Mountain Power shall not be obligated to obtain a permit to perform emergency repairs.

8.3 All Electric Facilities shall be located so as to cause minimum interference with the Public Ways of the City and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

8.4 If, during the course of work on its Electrical Facilities, Rocky Mountain Power causes damage to or alters the Public Way or public property, Rocky Mountain Power shall at its own cost and expense replace and restore it in as good a condition as existed before the work commenced. The City shall have the right to inspect all such work to ensure compliance with this Section 8.4.

8.5 In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, Rocky Mountain Power shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground as may be required by City ordinance.

8.6 The City shall have the right without cost to use all poles and suitable overhead structures owned by Rocky Mountain Power within Public Ways for City wires used in connection with its fire alarms, police signal systems, or other public safety communication lines used for governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the City for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that Rocky Mountain Power shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City shall be in such a manner as to prevent safety hazards or interferences with Rocky Mountain Power's use of same. Nothing herein shall be construed to require Rocky Mountain Power to increase pole size, or alter the manner in which Rocky Mountain Power attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. City attachments shall be installed and maintained in accordance with the reasonable requirements of Rocky Mountain Power and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City attachments shall be attached or installed only after written approval by Rocky Mountain Power in conjunction with Rocky Mountain Power's standard pole attachment application process. Rocky Mountain Power shall have the right to inspect, at the City's expense, such attachments to ensure compliance with this Section 8.6 and to require the City to remedy any defective attachments.

8.7 Rocky Mountain Power shall have the right to excavate the Public Rights of Ways subject to reasonable conditions and requirements of the City. Before installing new underground conduits or replacing existing underground conduits, Rocky Mountain Power shall first notify the City of such work by written notice and shall allow the City, at its own expense, (to include a pro rata share of the trenching costs), to share the trench of Rocky Mountain Power to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with Rocky Mountain Power's Electrical Facilities or delay project completion.

8.8 Before commencing any street improvements or other work within a Public Way that may affect Rocky Mountain Power's Electric Facilities, the City shall give written notice to Rocky Mountain Power.

SECTION 9. Relocations of Electric Facilities.

9.1 The City reserves the right to require Rocky Mountain Power to relocate its Electric Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no cost to the City. Within a reasonable period of time after written notice, Rocky Mountain Power shall promptly commence the relocation of its Electrical Facilities. Before requiring a relocation of Electric Facilities, the City shall, with the assistance and consent of Rocky Mountain Power, identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of the City.

The City shall assign or otherwise transfer to Company all right it may have to recover the cost for the relocation work and shall support the efforts of Rocky Mountain Power to obtain reimbursement.

9.2 Rocky Mountain Power shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, Rocky Mountain Power may charge the expense of removal or relocation to the developer or customer. For example, Rocky Mountain Power shall not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a condition of or caused by a private development.

SECTION 10. Subdivision Plat Notification. Before the City approves any new subdivision and before recordation of the plat, the City shall obtain Rocky Mountain Power's approval of Electrical Facilities, including underground facilities to be installed by the developer, and associated rights of way depicted on the plat. A copy of the plat shall be mailed for approval to Rocky Mountain Power.

SECTION 11. Vegetation Management. Rocky Mountain Power or its contractor may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways to prevent the branches or limbs or other part of such trees or vegetation from interfering with Rocky Mountain Power's Electrical Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent Rocky Mountain Power, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets.

SECTION 12. Renewal. At least 120 days prior to the expiration of this Franchise, Rocky Mountain Power and the City either shall agree to extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise. Rocky Mountain Power shall have the continued right to use the Public Ways of the City as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.

SECTION 13. No Waiver. Neither the City nor Rocky Mountain Power shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

SECTION 14. Transfer of Franchise. Rocky Mountain Power shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, or to affiliates, parents or subsidiaries of Rocky Mountain Power which assume all of Rocky Mountain Power's obligations hereunder, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, Rocky Mountain Power may assign, mortgage. pledge, hypothecate or otherwise transfer without consent its interest in this Franchise to any financing entity, or agent on behalf of any financing entity to whom Rocky Mountain Power (1) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

SECTION 15. **Amendment.** At any time during the term of this Franchise, the City through its City Council, or Rocky Mountain Power may propose amendments to this Franchise by giving thirty (30) days written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and Rocky Mountain Power and formally adopted as an ordinance amendment, which is accepted in writing by Rocky Mountain Power.

SECTION 16. **Notices.** Unless otherwise specified herein, all notices from Rocky Mountain Power to the City pursuant to or concerning this Franchise shall be delivered to the City Recorder's Office. Unless otherwise specified herein, all notices from the City to Rocky Mountain Power pursuant to or concerning this Franchise shall be delivered to the Regional Business Management Director, Rocky Mountain Power, 70 North 200 East, Room 122, American Fork, Utah, 84003, and such other office as Rocky Mountain Power may advise the City of by written notice.

SECTION 17. **Severability.** If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

SECTION 18. **Waiver of Jury Trial.** To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

PASSED by the City Council of the City of ______________, Utah this ____ day of ______________, 2020.

____

Shaun Dustin, Mayor

ATTEST:

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David Zook, City Recorder