



NIBLEY CITY COUNCIL MEETING AGENDA

Thursday, September 23, 2021 – 6:30 p.m.

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

1. Opening Ceremonies (Councilmember Bernhardt)
2. Call to Order and Roll Call (Chair)
3. Approval of the September 9, 2021, Meeting Minutes and the Current Agenda (Chair)
4. Public Comment Period¹ (Chair)
5. Planning Commission Report
6. **Discussion & Consideration** – Resolution 21-24: Amending Fee-in-Lieu for Water Shares for Developments Vested Prior to September 10, 2020 (First Reading)
7. **Discussion & Consideration** – Ordinance 21-19: Amendments to Nibley City Nuisance Code 07.02 (Third Reading)
8. **Discussion & Consideration** – Ordinance 21-16: Amending Animal Land Use Regulations (Third Reading)
9. **Discussion & Consideration** – Ordinance 21-17: Lot Line and Parcel Boundary Adjustments Review Process (Third Reading)
10. Council and Staff Report
11. **Adjourn to Closed Session** – To discuss the Purchase, Exchange, or Lease of Real Property Pursuant to Utah Code 52-4-205

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 determined by the presiding officer to be in violation of Council meeting rules shall be ruled out of order.

² Items on the Consent Agenda are considered to be routine and/or non-controversial and will be approved in one vote.



Agenda Item #6

Description	Discussion & Consideration – Resolution 21-24: Amending Fee-in-Lieu for Water Shares for Developments Vested Prior to September 10, 2020 (First Reading)
Presenter	Shaun Dustin, Mayor
Recommendation	Move to approve Ordinance 21-19: Amendments to Nibley City Nuisance Code 07.02
Reviewed By	Mayor, City Manager

Background:

Nibley's City Council has developed ordinances designed to diversify housing stock recognizing that there is a need to maintain a mix of family demographics that have helped the City to be what it is. PUDs were created to facilitate this.

We did not adequately understand or investigate the amount of water required under city code for new and more dense housing types, and underestimated how much water would be required; historically, developers had been able to turn over the water that came with their land on an approximate acre-per-acre basis. The City had an ordinance on the books (Fee in Lieu, FIL) that allowed people to purchase the right to use water the City owned for development if it was available, but the ordinance was obscure and had not been used in memory, so it had not been updated for many years.

FIL undervalued water in the City. When this was coupled with the demand for more water created by the changes to the General Plan and ordinance to allow PUDs, it created a situation where the City might have to sell water to developers for less than we paid for it. In response to this, we raised the amount of our FIL fee from \$500 per acre foot to \$2500 per acre foot.

Three proposals were accepted by the City for development under the PUD ordinance and in compliance with the General Plan, several months before the change to the FIL

went into effect. In most cases, State Law requires that proposals like this have standing at the time of acceptance by the City. The exception is in the case of fees. In that case, the City has discretion. The City also has discretion because City Code 15.02.030.B allows that:

“...the City Council may from time to time fix, by agreement or resolution, special rates and conditions for users using exceptionally large amounts of water service or making use of the water system under exceptional circumstances, upon such terms and conditions as they may deem proper...”

The purpose of this Resolution is to provide a compromise that preserves the ability of all parties to move forward with the General Plan as envisioned in the approved PUDs and represents responsible stewardship of city resources; it was not the Council's intent to create a situation where subdivision applicants with standing, who are attempting to assist the City to comply with the General Plan, are disincentivized from working in good faith with the city to build what we have directed them to build.

The City has the water in hand to facilitate this compromise. The total maximum water required would be XXXX shares. The City has in hand YYYY shares. Most of the surplus water the City has on hand was provided at no cost to the City as water from development that was in excess of the water required to service our demand. The most the City has paid for water shares via direct purchase is \$2500/share. The Resolution sets the price at \$2500 per share in recognition of this, and increases the value by 2% per year to recognize inflation.

The proposal requires the requestor to provide proof of need by disclosing all purchase documents and water transactions, and to provide a qualified study as outlined in the resolution to be eligible for the program, and limits the program to the three specific PUDs that had standing prior to passage of the new FIL ordinance.

The recommendation is to pass the Resolution. It keeps faith with the entities that are helping the City to develop the General Plan, it keeps the City Budget whole by ensuring that the Citizens are fairly compensated for the water provided, it limits the scope of the agreement to the three parties that in all other aspects had standing prior to the changes to City Code, and it preserves the ability of the Council to keep the existing FIL in place.

RESOLUTION 21-24

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A RESOLUTION AMENDING FEE-IN-LIEU FOR WATER SHARES FOR DEVELOPEMTNS VESTED PRIOR TO SEPTEMBER 10, 2020

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WHEREAS, The City made planning decisions to diversify housing stock to maintain a mix of family demographics that have helped the City to be successful, and created PUDs to facilitate these decisions; and

WHEREAS, in an effort to bring fees in lieu of water in-line with rates for surrounding communities, Nibley changed the fee in lieu of water by a factor of 15, after approval of land use applications for 3 PUDs; and

WHEREAS, the City Council did not adequately understand or investigate the amount of water required under city code for new and more dense housing types; and

WHEREAS, the City Council, upon seeing the inadequacy of city code has made changes to more accurately assess water quantity and pricing; and

WHEREAS, Ridgeline Park, Firefly Estates, and Nibley Farms PUDs were all submitted, approved consistent with the General Plan, and vested, prior to the changes in Nibley's fee in lieu structure; and

WHEREAS, it was not the Council's intent to create a situation where subdivision applicants with standing, who are attempting to assist the City to comply with the General Plan, are disincentivized from working in good faith with the city to build what we have directed them to build; and

WHEREAS, consistent with State law, the City has collected water surplus to provide for the future needs of the city that is dedicated to supporting uses that are consistent with city values and goals as outlined in the General Plan and as enacted through the legislative subdivision approval process; and

WHEREAS, the City has the surplus water in hand to facilitate this specific proposal without negatively impacting the financial interest of the citizens.

WHEREAS, City Code 15.02.030.B allows that "...The City Council may from time to time fix, by agreement or resolution, special rates and conditions for users using exceptionally large amounts of water service or making use of the water system under exceptional circumstances, upon such terms and conditions as they may deem proper..."; and

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

1. The City would like to structure a compromise that preserves the ability of all parties to move forward with the General Plan as envisioned in the approved PUDs and represents responsible stewardship of City resources.

2. Nibley City will make fee in lieu water available to the three PUD applicants who were vested with the PUD ordinance at the time Resolution 20-11 was enacted under the following conditions:

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WHEREAS, consistent with State Law, the City has collected water surplus to provide for the future needs of the city that is dedicated to supporting uses that are consistent with city values and goals as outlined in the General Plan and as enacted through the legislative subdivision approval process; and

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- A) Applicants shall provide to the city all documents related to sale or transfer of water ownership related to the subject parcels, and any and all transactions with the previous owners of the parcels.
- B) Applicants will provide a summary of all water attached to the property in question and appurtenant to their contract with the previous owners, that is consistent with the documentation required above.
- C) Applicants will provide a sworn and notarized affidavit attesting to the amount of water acquired in the primary transaction and effort to acquire any additional water and total quantity of water acquired by the development group. The affidavit will commit any and all water listed to satisfy the requirements of the project. By providing the affidavit the proponent agrees that if the City determines that the affidavit is false, omits information, or is otherwise lacking in good faith, or that water has been removed from the project and reallocated to other projects or sold on the market or is being withheld for any purpose, the proponent will no longer be eligible for this resolution, and will not be eligible for any fee in lieu water at any price from the City.
- D) To participate in this program, applicants will provide an independent analysis of water consumption stamped by a registered professional engineer, licensed in the State of Utah and competent in this field consistent with city code, and a detailed review of development proposal to establish the actual amount of water required to complete the development as approved in the development agreement. This will be reviewed by the city engineer or their designee and brought to council for a recommendation of acceptance or rejection. If accepted, it will establish the amount of water necessary to complete the project.
- E) On an as needed and as available basis the City will calculate the value of the surplus water available for fee in lieu as follows:
 - i. Calculate a present day value for water shares based on the original price of \$2500 from the last major water share purchase by the City, escalated at 2%/yr from date of purchase at the time the request to purchase is made.
 - ii. Multiply the quantity required per the approved analysis by the price determined herein
 - iii. Make shares available at the price determined above.

- 3) This resolution is effective only for the specific projects outlined herein. Any applications received after the effective date of the new fee in lieu ordinance will be evaluated on their own merits.

PASSED and ADOPTED BY THE NIBLEY CITY COUNCIL THIS _____ DAY OF _____, 2021.

Shaun Dustin, Mayor

ATTEST:

Cheryl Bodily, City Recorder

Agenda Item #7

Description	Discussion & Consideration – Ordinance 21-19: Amendments to Nibley City Nuisance Code 07.02 (Third Reading)
Presenter	Levi Roberts, City Planner
Recommendation	Move to approve Ordinance 21-19: Amendments to Nibley City Nuisance Code 07.02
Reviewed By	Mayor, City Manager, City Planner, City Attorney

Background:

Update for September 23

During the 2nd reading of this item, Councilmember Larsen expressed to consider amending the draft ordinance so that inoperable vehicles and machinery be considered a nuisance only when in public view, rather than unsheltered. He further requested that the obstruction of public view be of a solid material, such as a privacy fence. To be consistent, Staff recommends the same approach for the storage and scattering of personal property items, as well. The updated ordinance reflects this change with the following definition for public view:

PUBLIC VIEW: can be seen from up to six feet above the surface of public property, which may include a road, sidewalk, trail, park or other public space. Any obstruction of public view must be of solid, permanent material, such as an opaque concrete, wood or vinyl fence or a permitted building.

Considering this change, Staff recommends removing ‘excessive and open vehicle storage’ from the list of potential nuisances. This was meant to address unsheltered excessive vehicle storage that may or may not be in public view. With the change to the treatment of inoperable vehicles, this description is no longer necessary.

These changes have been included in the draft ordinance amendments which Staff recommends for approval.

Update for September 9

During the August 26 City Council meeting, the Council gave Staff direction to amend the nuisance ordinance, adding language that would refund the appeal fee in the event

that the appellant is successful with his/her appeal. Such language has been added to the ordinance. Specifically, NCC 7.02.060(A)(3)(b) states:

Prior to scheduling the appeal hearing, the owner shall pay a fee set by City Council which shall be fully refundable in the event that the administrative appeal officer rules in favor of the appeal. The administrative appeal officer shall set the time and place for hearing objections and the city recorder shall notify the owner of said property on the condition thereof, in writing, of the time and place at which they may appear and be heard. The hearing shall be heard within less than twenty (20) days from the date of service or mailing of the notice of hearing.

In addition to this change, Councilman Larsen agreed to explore language that would allow those that are restoring a vehicle to obtain a temporary permit to perform such restoration in an unsheltered location without violations of the nuisance ordinance.

Nibley City Code Section 7.02 provides the conditions and procedures for mitigating nuisance conditions in the City. The Code defines a nuisance as:

Whatever is dangerous to human life or health, deleterious, injurious, noxious, unsightly and whatever renders soil, air, water or food impure or unwholesome, which includes but is not limited to conditions described in this chapter.

During the July 22 City Council meeting, Staff presented the nuisance abatement process and the status of nuisance cases in 2021. Through the process of enforcing the code, a number of issues have arisen, which residents and Staff has identified. These issues were discussed with City Council with a follow-up meeting held with Councilmembers Laursen and Larsen. Based upon this discussion and Staff's experiences administering the code, the following changes are recommended:

1. Amend and clarify the description of 'inoperable vehicles and machinery.' This includes clarifying that vehicles, machinery or implements which are junked, stripped or unused fall under this category. Staff also recommends that this provision only applies when there are more than two such unsheltered vehicles on the property. The impact of less vehicles is relatively low and enforcement for such relatively minor offensive conditions is not worth City resources.
2. Clarify and provide reasonable definitions for the terms 'unsheltered,' 'public view,' and 'driveway.' This will allow code enforcement to make a more defined and consistent determination of a violation which involve such terms.
3. Add a description of 'excessive and open vehicle storage,' to provide a limit of four vehicles per acre to be stored outside of a driveway or shelter. This

would apply to both registered and unregistered vehicles and would be in addition to the provisions related to inoperable vehicles and parking vehicles on the front lawn.

4. Limit the author of the nuisance to the property owner. The current ordinance specifies that the property owner, tenant or anyone responsible could be charged with a nuisance violation. However, tying the violation to multiple individuals becomes difficult to enforce. In particular, it would not be appropriate to send a citation to the property owner, the tenant, and someone who was visiting the property and may have left their belongings there. The City has records of the property owner and as such, can charge the property owner for offenses on his/her property.
5. Add a description for improper buildings and structures that have been constructed in violation of Nibley City Code.

In addition to these changes, it was considered by Staff and Council members Larsen and Laursen to consider adding a provision that granted leniency with the timeframe given in the ordinance. However, it was concluded that 30 days is a reasonable timeframe to abate nuisance conditions. The vast majority of violations have proven to abate conditions within this timeframe and it is anticipated that this will be better adhered to as the City continues to enforce the ordinance.

ORDINANCE 21-19
AMENDING NUISANCE REGULATIONS

WHEREAS, Nibley City regulates nuisances within Nibley City boundaries to protect health and welfare of residents; and

WHEREAS, It is necessary to clarify undefined and ambiguous terms within the existing Code; and

WHEREAS, It is more appropriate and enforceable to limit the author of the nuisance to be the land owner of the property in which the nuisance occurs;

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

1. The proposed amendments to NCC 7.02 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 _____, 2021.

Shaun Dustin, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

7.02.010 Definitions

As used in this chapter, the following words and terms shall have the meanings ascribed to them in this section:

AUTHOR: ~~The record land owner(s)~~ shall be deemed to be the author(s) of and shall be liable and responsible ~~for any nuisance present on or arising out of the use of the property.~~

NUISANCE: Whatever is dangerous to human life or health, deleterious, injurious, noxious, unsightly and whatever renders soil, air, water or food impure or unwholesome, which includes but is not limited to conditions described in this chapter.

UNSHELTERED: ~~not contained within a building or structure, including the primary building or an accessory building.~~

PUBLIC VIEW: ~~can be seen from up to any point six feet above the surface of a public property, which may include a road, sidewalk, trail, park or other public space.~~ ~~Any obstruction of public view must be of solid, permanent material, such as an opaque concrete, wood or vinyl fence or a permitted building.~~

DRIVEWAY: ~~a surface of concrete, asphalt, gravel or other hard material, which is used to park a vehicle or for vehicular access to a garage or parking area.~~

STRUCTURE: ~~Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having location on the ground.~~

FRONT YARD: ~~An open space on the same lot with a building between the front line of the building (exclusive of steps) and the front lot line and extending across the full width of the lot. On a corner lot, the front yard may be applied to either street.~~

BUILDING: ~~Any structure built or erected for the support, shelter or enclosure of persons, animals, chattel or property of any kind.~~

7.02.020 Declaration Of Nuisance

- A. Statement: Every act or condition made, permitted, allowed or continued in violation of NCC 7.02.010, is hereby declared to be a nuisance and may be abated and punished as hereinafter provided. No person owning ~~any property~~ shall ~~allow the continuance of a nuisance thereon.~~
- B. Specified: Nuisances include, but are not limited to:
1. Befouling Water: Befouling water in any spring, stream, well or water source supplying water for culinary purposes.
 2. Privies, Cesspools: Allowing any privy vault or cesspool, or other individual wastewater disposal system, to become a menace to health or a source of odor or contamination to air or water.
 3. Garbage Containers, Permitting any garbage container that has become unclean and offensive, to remain on premises without disposal, for a period of no longer than fourteen (14) days.
 4. Garbage Accumulation: Allowing, garbage, litter, filth or refuse of any nature to accumulate within or upon any private alley, yard or area, except when it is temporarily deposited for immediate removal or being composted.
 5. ~~Storage of Personal Property in Public View:~~ The keeping, depositing and scattering over the premises any objects or equipment, which are ~~in public view.~~

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- Exceptions include home decor, outdoor furniture, garbage containers and temporary placement, **no more than thirty (30) days** of items for sale or disposal.
6. Parked vehicles in front yard: Parking of vehicles, trailers or recreational vehicles in the front yard area outside of a driveway and unsheltered.
 7. Inoperable Vehicles & machinery: **Storage of more than two** unused, stripped or junked machinery, vehicles, implements **or** equipment which **are**, no longer safely usable for the purposes for which **they were** manufactured, for a period of thirty (30) days or more (except in licensed junkyards) **in public view** within the city. Any unregistered passenger vehicle shall be considered unused.
 8. ~~Excessive and Open Unsheltered Vehicle Storage: The parking of more than four (4) passenger vehicles per acre of property outside of a driveway or unsheltered, whether operable or not.~~
 9. Manure Accumulation: Permitting the accumulation of manure in any stable, stall, corral, feed yard, yard or in any other building or area in which any animals are kept.
 10. Slaughterhouses, Feed Yards: Permitting any slaughterhouse, market, meat shop, stable, feed yard or other place or building wherein any animals are slaughtered, kept, fed or sold to remain unclean or in any state or condition detrimental to health or creating a nuisance because of odors, or in which flies or rodents breed.
 11. Discharging Offensive Water Or Liquid Waste: Discharging or placing any offensive water, chemical spray, liquid waste or refuse of any kind into any street, alley, sidewalk, gutter, stream, wash, natural watercourse, ditch, canal or any vacant lot or which, as the result of continued discharge, will render the place of discharge offensive or likely to become so.
 12. Collecting Grease, Offensive Matter: Keeping or collecting any stale or putrid grease or other offensive matter.
 13. Flies And Mosquitoes: Having or permitting upon any premises any fly- or mosquito-producing condition.
 14. Public Drinking Vessels: Keeping any drinking vessel for public use without providing a method of decontamination between uses.
 15. Ablutions Near Drinking Fountain: Permitting or performing any ablutions in or near any public drinking fountain.
 16. Boarding House Or Factory, Sanitary Condition: Failing to furnish any dwelling house, boarding house or factory or other place of employment with such privy vaults, water closets, sinks or other facilities as may be required to maintain the same in sanitary condition.
 17. Cleaning Privy Vaults: Neglecting or refusing to discontinue use of, clean out, disinfect and fill up all privy vaults and cesspools or other individual wastewater disposal systems within twenty (20) days after notice from an enforcement officer or official of the city.
 18. Stagnant Water; Offensive Substances: Permitting any lot or excavation to become the repository of stagnant water or any decaying or offensive substances.
 19. Obstructing Public Ways, Watercourses, Parks: Obstructing or tending to obstruct or interfere with or render dangerous for passage any street or sidewalks, lake, stream, drainage, canal or basin, utility line or connection, utility easement, or any public park without first obtaining the written permission of the city council.

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20. Dead or Diseased Trees: Any dead or diseased trees which constitute a hazard to life and property, or harbor insects or disease which constitute a potential threat to other trees within the city.

21. Unmaintained Structures: Structures which have a foundation, exterior wall, and/or roof not maintained in good repair, thus not allowing all rooms and other interior areas to be weathertight, watertight, and rodentproof and be maintained in good condition. This includes broken windows and surfaces which are not painted, stained, or constructed of decay-resistant materials to protect and preserve the safety and appearance of the structure. Structures which are under active construction are not considered unmaintained. Active construction shall be considered for up to 18 months.

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22. Improper Buildings and Structures: Buildings and structures that have been constructed in violation of Nibley City code and regulations, including permit requirements, setback requirements, conservation restrictions, no-build zones, public utility and other easements, or plat restrictions.

C. Enumeration: The types of nuisances above stated shall be deemed in addition to and in no way a limitation of the nuisances subject to this chapter.

7.02.030 Restroom Or Sewer Facilities

All restrooms or sewer facilities shall be constructed and maintained in accordance with Utah law and city ordinances. All such facilities that do not comply with such provisions are hereby declared to be a nuisance and are subject to abatement as herein prescribed.

7.02.040 Restrictions On Blocking Water

- A. It shall be unlawful for any person to permit any drainage system, canal, ditch, basin, conduit or other watercourse of any kind or nature, natural or artificial, to become so obstructed as to cause the water to back up and overflow therefrom, to be diverted or drained onto other property without authorization, or to become unsanitary.
- B. Creating or allowing the existence of any such obstructed watercourse in such condition shall constitute a nuisance and the same shall be subject to abatement.

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7.02.060 Abatement Procedure

- A. Code Enforcement Officer:
1. Established: There is hereby established the position of code enforcement officer, whose duties it shall be to enforce the provisions of this chapter. Until a code enforcement officer is designated, the city manager, or designee, or the city's law enforcement agency shall enforce the provisions of this chapter.
 2. Duties: The code enforcement officer or the city's law enforcement agency is authorized to:
 - a. Perform all functions necessary to enforce the provisions of this chapter. Inspect or cause to be inspected, as often as needed, all buildings, structures, lots or places for the purpose of determining whether such are in compliance with the provisions of this chapter.
 3. Existence Of Objectional Condition: If the code enforcement officer or city's law enforcement agency concludes there exists an objectionable condition in violation

of this chapter, the code enforcement officer or the city's law enforcement agency shall.

- a. Ascertain the names of the owners and descriptions of the premises where such objects and/or conditions constituting a nuisance exist. Serve notice in writing upon the owner of such premises, either personally or by mailing notice prepaid, addressed to the owner at their last known post office addresses as disclosed by the records of the county assessor, or as otherwise ascertained, requiring such owner to remove the nuisance within such time as the code enforcement officer or the city's law enforcement agency may designate; provided, that any person notified pursuant to this subsection shall be given at least ten (10), but not more than thirty (30) days, as determined by the code enforcement officer or the city's law enforcement agency following the date of service of such notice, to correct the objectionable condition. The notice shall:
 - 1) Contain a specific statement of the nature of the violation and generally describe the premises on which the violation exists. Inform the owner that in the event he/she disagrees with the determination of the code enforcement officer or the city's law enforcement agency, and that he/she objects to the factual or legal basis for the notice, he/she may request, in writing, an informal hearing before the administrative appeal officer. The appeal hearing must be applied for within 10 days of receiving the notice of objectionable condition and must contain a summary or copy of all evidence, claims, and objections the owner intends to raise. A written application for a hearing shall stay the time within which the person must conform to the provisions of the notice.
 - 2) Inform the person that in the event he/she fails or neglects to correct the objectionable condition, the city will correct the objectionable condition and will collect the costs of so correcting the objectionable condition by either a court action, in which case he will be assessed such costs, together with reasonable attorney fees and court costs, or will charge the cost of correcting the violation against the property as a tax.
 - b. Prior to scheduling the appeal hearing, the owner shall pay a fee set by the City Council, which fee shall be refundable in the event that the administrative appeal officer overrules the determination of the code enforcement officer in its entirety. The administrative appeal officer shall set the time and place for hearing objections and the city recorder shall notify the owner of said property on the condition thereof, in writing, of the time and place at which they may appear and be heard. The hearing shall be heard within less than twenty (20) days from the date of service or mailing of the notice of hearing.
4. Hearing:
- a. Informal Hearing; Written Decision: At the timely written request of an owner of property which is the subject of a notice of violation, the administrative appeal officer shall conduct an informal hearing. The owner

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"Prior to scheduling the appeal hearing, the owner shall pay a fee set by the City Council, which fee shall be refundable in the event that the owner prevails on all claims the owner raised on appeal to the administrative appeal officer."

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- may present such evidence and argument as is pertinent to the question of whether or not the removal or abatement of the objects, structures, or conditions is properly within the purview of this chapter. Failure to present any evidence, objection, or claim shall waive the owner's right to have the same be considered by the administrative appeal officer or any other reviewing entity. The administrative appeal officer shall also permit the presentation of evidence and argument by the code enforcement officer or the city's law enforcement agency and other interested parties. Thereafter, the administrative appeal officer shall, render its written decision, a copy of which shall be mailed to or served upon the owner.
- b. Notice Of Decision; Abatement By Owner: In the event the decision of the administrative appeal officer upholds the determination of the code enforcement officer or the city's law enforcement agency, the notice originally given by the code enforcement officer or the city's law enforcement agency as above provided shall be deemed to be sufficient to require the owner or occupant to remove or abate the objectionable objects or conditions, and he shall have up to ten (10) days from the date of notice of the decision within which to conform thereto, unless additional time, not to exceed thirty (30) days, is authorized by the code enforcement officer or the city's law enforcement agency.
- c. Time Period For Compliance: In the event that the decision of the administrative appeal officer either overrules or modifies the determination of the code enforcement officer or the city's law enforcement agency, the written decision of the administrative appeal officer shall apprise the owner of that fact and set forth the details and extent to which the owner must make removal or other abatement of the objectionable objects or conditions, if any. The owner shall be required to conform to the decision within ten (10) days after service or mailing of a copy of the decision.
- d. Filing Of Amended Notice: The code enforcement officer or the city's law enforcement agency shall file an amended notice and proof of service of notice and file the same in the office of the county treasurer.
5. Failure To Comply; Abatement By City: If any owner, described in such notice or decision to whom the notice was given shall fail or neglect to conform to the requirements thereof relating to the abatement of the nuisance, the code enforcement officer or the city's law enforcement agency may employ all necessary assistance to cause such objectionable objects or conditions to be removed or destroyed at the expense of the city.
6. Itemized Statement: The code enforcement officer or the city's law enforcement agency shall prepare an itemized statement of all expenses incurred in the abatement of nuisances, including administrative, personnel, and legal costs, and shall mail a copy thereof to the owner or occupant or both or to persons having an interest in the property, demanding payment within twenty (20) days of the date of mailing. The notice shall be deemed delivered when mailed by registered mail, addressed to the property on which the nuisance exists, the address of record with county land records for the owner or the property, or last known address of the

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property owner, occupant or persons having an interest in the property if different from the above.

7. Failure To Make Payment: In the event the owner fails to make payment of the amount set forth in the statement to the city treasurer within the twenty (20) days, the code enforcement officer or the city's law enforcement agency may either cause suit to be brought in an appropriate court of law or may refer the matter to the county treasurer as provided in this chapter.
8. Collection:
 - a. Lawsuit: In the event collection of expenses of destruction and removal are pursued through the courts, the city shall sue and receive judgment for all of said expenses of destruction and removal, together with reasonable attorney fees, interest and court costs, and shall execute upon such judgment in the manner provided by law. The city may also assign its right to enforce and collect such expenses to a collection agency or other entity for collection, which entity shall have the same right to collect as if they were the city.
 - b. Taxes: In the event that the building inspector or the city's law enforcement agency elects to refer the expenses of destruction or removal to the county treasurer for inclusion in the tax notice of the property owner, he shall make in triplicate an itemized statement of all expenses incurred in the destruction and removal of the same, and shall deliver three (3) copies of the statement to the county treasurer within ten (10) days after the completion of the work of destroying or removing such weeds, refuse, garbage, objects or structures. Thereupon, the costs of the work shall be pursued by the county treasurer in accordance with the provisions of Utah Code § 10-11-4, as amended, and the recalcitrant owner shall have such rights and shall be subject to such powers as are thereby granted.
9. Criminal Proceedings: The commencement of criminal proceedings for the purpose of imposing penalties for violations of this chapter shall not be conditioned upon prior issuance of a notice or the granting to the defendant an opportunity to abate or remove the nuisance. The provisions of this chapter relating to notice and abatement shall be deemed merely alternative and additional methods of securing conformity to the provisions of this chapter.

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7.02.070 Penalty For Failure To Comply

- A. Infraction: Any owner subject to this chapter who shall fail to comply with the notice or order given pursuant to this chapter shall be guilty of an infraction and, upon conviction thereof, subject to penalty as provided in NCC 1.08.010 for each offense, and further sum of ten dollars (\$10.00) for each and every day such person fails to comply beyond the date fixed for compliance. For nuisances related to an individual's use of the individual's residence, the individual shall be subject to prosecution for each 14-day time period the violation continues, each of which periods shall be considered a separate violation. For all other nuisances, each day shall be considered a separate violation.
- B. Class C Misdemeanor: Any owner subject to this chapter who shall fail to comply with the notice or order given pursuant to this chapter may be charged with a class C misdemeanor

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if the nuisance threatens the health, safety, or welfare of the individual or an identifiable third party or the individual has been convicted of a violation of this chapter on three previous occasions within the past 12 months.

- C. Criminal Proceedings: Compliance by any owner, subsequent to the commencement of criminal proceedings as provided in this chapter shall not be admissible in any criminal proceeding brought pursuant to this section.

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Agenda Item #8

Description	Discussion & Consideration – Ordinance 21-16: Amending Animal Land Use Regulations (Third Reading)
Presenter	Levi Roberts, City Planner
Recommendation	Move to approve Ordinance 21-16: Amending Animal Land Use Regulations.
Reviewed By	City Manager, City Planner, City Attorney, Planning Commission

Background:

Update for September 23

During the second reading of this item, Councilmember Laursen, stated that he had some suggested amendments to the ordinance. These were directed to be incorporated into the draft ordinance. However, at the time of this writing, they have not been received.

There was also a question about the purpose of this ordinance. Staff recommends reviewing the findings below, which explain the purpose of these changes. In general, the recommended changes are minor, incremental improvements to the ordinance that will improve its clarity and be more in line with federal and state law, including the Americans with Disabilities Act (ADA) and recent changes to State Code regarding conditional use permits.

Update for September 9

During the first reading of this item, there was a motion to delete provisions related to miniature pigs and assign roosters and billy goats 500 points to prevent the keeping of them on smaller lots. Previously, Staff recommended to delete Section 19.34.060. However, upon further review, it was found that there are significant differences

between regulations for lots between 0.75 and 5 acres and those greater than 5 acres with regards to the point levels. In general, animals in lots with greater than 5 acres are assigned lesser point levels. This is logical, as such large agricultural lots have greater areas that can be dedicated to keeping such animals and generally can house such animals in a manner which mitigates impact on neighboring properties.

Based upon this background and the motion that was made, Staff recommends simply deleting roosters and billy goats from Section 19.34.050 and keeping 19.34.060 unchanged with the exception of provisions that allow for a conditional use permit for animals not listed. This would allow for a combination of animals on larger lots (greater than 5 acres) including roosters and billy goats but would prohibit them on smaller lots.

Recently, a potential resident of the City expressed the desire to house two Juliana Pigs on a residential lot in Nibley City. Pigs are currently addressed within NCC 19.34: Animal Land Use Regulations. Under this provision of code, pigs are only allowed on a lot with more than $\frac{3}{4}$ acre and only 1 pig is allowed per $\frac{1}{2}$ acre. There is also no differentiation between different breeds of pigs within the Code. The petitioner has expressed that the pigs are approximately the size of an english bulldog, are very clean and have minimal impact to neighbors.

Considerations

- What is the anticipated impact of miniature pigs on residential neighborhoods (smell, noise, etc.)?
- Can anticipated impacts be reasonably mitigated?
- What are the potential benefits to the community to allowing the keeping of miniature pigs as pets?
- If miniature pigs should be allowed on smaller lots in Nibley City, how should this be incorporated into Nibley City Code?

Current state of practice

Although most communities prohibit large pigs from residential zones, some municipalities address miniature pigs differently than livestock. For example, Logan City defines potbelly pigs as 'exotic pets,' allowing up to 5 of such for each residence.

A quick survey of Planners across Utah revealed the following approaches and experiences:

- In West Valley City, pot-bellied pigs are considered a household pet. Each household is allowed up to four pets from a long list of potential pets. Weight is limited to 150 pounds, and any tusks must either be removed or kept trimmed.
- In Eagle Mountain, pigs (of all kinds) are allowed on lots greater than $\frac{1}{2}$ Acre in size, they allow 2 pigs on lots $\frac{1}{2}$ - 1 acre, 4 Pigs on lots from 1 to 3 acres, and 8 pigs on lots 3+ acres in size. They require 500 SF of fenced area per

animal, and to be at least 150' from the nearest occupied structure on an adjacent lot.

- In Brigham City, there was a resident with a miniature pig that petitioned the City to allow them. City Staff offered this experience: "The house that had the pigs had odors that would carry to the neighbors' houses in the summer, and the back yard where the pig spent a fair amount of time was devoid of plant life but had plenty of pig poop. We did not end up allowing them here. It was one of the few times in my job here that the tv cameras were showing up for staff review, planning commission, and City Council meetings."
- In North Salt Lake, after much research and deliberation, the Council decided that pot belly pigs were household pets and not domesticated farm animals. They adopted the following definition:

HOUSEHOLD PETS: Animals or fowl ordinarily permitted in the house and kept for company or pleasure, such as dogs, cats and canaries, but not normally dangerous animals, such as lions or tigers. This definition shall not include a sufficient number of dogs as to constitute an "animal kennel", as defined in this section. Purebred miniature Vietnamese potbelly pigs and other similar purebred miniature pigs, not exceeding one hundred twenty five (125) pounds and twenty two inches (22") in height at the shoulder, limited to no more than two (2) miniature potbelly pigs per residence.

City Staff offered this additional information: "My research told me that there really is no such thing as a mini pig, they are mini because they are being starved so they don't grow full size which shortens their life expectancy. However, they are very smart, are litter box trained, but you don't want more than 2 or they get into mischief."

- Layton City recently considered allowing miniature pigs as household pets, but ultimately denied the request due to concerns of impacts on neighbors.

Recommended approach to applicant's request

In order to consider the applicant's request, Staff recommends considering the addition of 'potbellied pigs or other similar miniature pig, not to exceed 125 pounds' to the list of allowed animals under each appropriate section of NCC 19.34. This is the most appropriate approach as the impact of a miniature pig, in many ways, may be compared to that of a pygmy goat or sheep, which are allow up to 2 such animals on lots greater than 18,000 sq. ft. For lots greater than 0.75 acre, Staff recommends considering adding miniature pigs to the chart of allowed 'large animals,' assigning 15 points per animal, which is the same as a sheep or female/whether goat.

Although this Staff recommends considering this approach to accommodating miniature pigs within the land use ordinance, Staff does not recommend adopting this portion of the amendment. This is due to the anticipated impact that miniature pigs may have on surrounding neighbors, particularly related to potential smells. It is understood that this may be mitigated with proper care of such animals, but their remains a risk for those that do not properly and frequently clean the animal's waste. It is not feasible for the City to monitor and effectively enforce this activity.

Other recommended changes

In addition to the consideration to allow for miniature pigs on smaller lots, Staff recommends making the following changes to NCC 19.34: Animal Land Use Regulations.

1. Amend definition of household pet, excluding references to domesticated/commercial use.
2. Add definition of service animal consistent with the Americans with Disabilities Act (ADA)
3. Strike the provision that allows a conditional use permit for service animals, if they are in addition to the maximum animal limits. Service animals would not count toward the total number of allowed animals. Staff consulted with the attorney on this provision, who agreed that counting service animals toward the total number of allowed pets was allowed, although the City would need to allow for a service animal in the instance that the household already has met the limit for household pets, then needs a service animal. This situation would be difficult for Staff to monitor and enforce. It is recommended that rather than the City simply not count the service animal toward the total number of household pets, as they are not defined as such under Federal Law.
4. Add a provision that household pets (other than cats and dogs) are permitted if kept within the primary dwelling. Currently, all pets not listed are prohibited, so technically it is not legal to own a fish or hamster in Nibley City. Staff believes not enforcing legally-owned pets within the home is reasonable, as the City is unlikely to enforce the keeping of small pets within the home. Those that are not kept within the dwelling at all times are not permitted unless otherwise listed.
5. Strike the provision that allows for a conditional use permit for animals not listed. The City does not have objective standards to apply in various situations. If an animal is not listed, the owner would need to apply to add it to the list of allowed animals and it could be applied appropriately at that time.
6. Amend the provision that requires a conditional use permit for a third dog on lots greater than 0.75 acre. In place of this, require a administratively approved kennel permit with objective standards. With this change, Staff recommends the following standards be added to the kennel permit section of Nibley City Code:
 - a. The applicant must provide proof that the outdoor area in which all dogs are kept is completely fenced in.
 - b. Housing of dogs: Dogs must be either kept completely indoors during the hours of 10:00 PM and 7:00 AM or kept in an outdoor shelter, setback at least 10 feet from all property lines and 30 feet from any structures outside of the lot in which it is located.
 - c. Adequate shade and shelter from the elements shall be provided for all dogs kept outdoors.
7. Delete section 19.34.060, which currently duplicates 19.34.050, with the exception of the requirement for CUP for the third dog.

Planning Commission Recommendation

Recommend approval of 'Ordinance 21-16: Amending Animal Land Use Regulations,' with the following edits:

1. Delete provisions related to 'potbelled pigs or other similar miniature pigs.'
2. Under Kennel license provisions related to required outdoor shelters, add 'which includes a roof of solid structure'
3. Amend Term of License to read 'Dog licenses shall be valid for the duration of the calendar year (January 1 – December 31).'

Recommended Findings

1. The keeping of miniature pigs on lots smaller than 0.75 acre has the potential of producing negative impacts upon surrounding properties, related to smell and noise. Monitoring and enforcing mitigating measures would be infeasible.
2. Service animals are not considered household pets, and as such, should not be subject to the same limitations of a household pet. Requiring a conditional use permit for such animals, is not appropriate and could introduce subjectiveness to the process.
3. Allowing for a conditional use permit for animals not listed is not appropriate, as objective standards cannot be considered for an animal that is not listed.
4. A kennel permit for a third dog would be appropriately administered administratively and is not in need of a conditional use permit.
5. Household pets kept indoors at all times, such as fish, reptiles, and small rodents have a minimal impact upon surrounding properties, are difficult to monitor and enforce and should not be subject to limitations of other household pets (i.e. cats and dogs).

ORDINANCE 21-16
AMENDING ANIMAL LAND USE REGULATIONS

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

WHEREAS, per the Americans with Disabilities Act (ADA), Service animals are not considered household pets, and as such, should not be subject to the same limitations of a household pet.; and

WHEREAS, Allowing for a conditional use permit for animals not listed is not appropriate, as objective standards cannot be considered for an animal that is not listed;

WHEREAS, Household pets kept indoors at all times, such as fish, reptiles, and small rodents have a minimal impact upon surrounding properties, are difficult to monitor and enforce and should not be subject to limitations of other household pets.

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

1. The proposed amendments to NCC 9.02.050, 19.04.010, 19.28.050, and 19.34 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 _____, 2021.

Shaun Dustin, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

9.02.050 Licensing Requirements

- A. **License Required:** It is unlawful for any person to keep, harbor or maintain any dog six (6) or more months old unless such dog has been registered and licensed in the manner herein provided.
- B. **Application; Information:**
1. Application for registration and licensing shall be made to Nibley City or its designee.
 2. The owner shall state at the time application is made for such license his name and address and the sex, breed and color of each dog owned or kept by him.
- C. **Issuing Authority:** A dog license shall be issued by Nibley City or its designee..
- D. **Fee For License:** No dog license shall be issued until the fee as established by resolution of the city council is paid.
- E. **Date Due; Penalty:** The fee due and payable pursuant to this section shall be due January 1 and shall be delinquent March 1 of each year. A penalty shall be added to delinquent payments, which penalty shall be determined by resolution of the City Council.
- F. **Newly Acquired Dogs:** The owner of any newly acquired dog of licensing age or of any dog which attains licensing age shall make an application for registration and license within thirty (30) days after such acquisition or dogs attain the above stated age.
- G. **Kennel License**
1. The following conditions must be met prior to the issuance of a kennel permit:
 - a. The applicant must provide proof that the outdoor area in which all dogs are kept is completely fenced in.
 - b. Housing of dogs: Dogs must be either kept completely indoors during the hours of 10:00 PM and 7:00 AM or kept in an outdoor shelter, which includes a roof of solid structure, setback at least 10 feet from all property lines and 30 feet from any structures outside of the lot in which it is located.
 - c. Adequate shade and shelter from the elements shall be provided for all dogs kept outdoors.
 - d. **Fee:** No kennel license shall be issued unless the provisions of NCC 19.34, titled "Animal Land Use Regulations" are met. Authorized kennel licenses shall pay an annual license fee, in addition to required registration fees.
- H. **Term Of License:** Dog licenses shall be valid for the duration of the calendar year (January 1 – December 31).
- I. **Rabies Certificate:** All dogs are required to keep and maintain current rabies vaccination in order to be licensed with Nibley City. As part of registration and licensing of dogs, dog owners shall be required to provide Nibley City with a certificate demonstrating that the dog's rabies vaccination is current.
- J. **Exceptions:**
1. Service Animals, as defined in NCC 19.34.020, shall not be assessed annual license fees for the service animal.
- K. **License Tag:**
1. Issuance: Upon payment of the license fee, the city recorder shall issue to the owner a license certificate and a metallic tag for each dog so licensed. Once issued, a tag is valid until the dog is no longer registered with Nibley City. Every dog owner,

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- shall provide each dog with a collar to which the license tag shall be affixed. It shall be unlawful to deprive a registered dog of its collar and/or tag.
2. Duplicate Tag: In case a dog tag is lost or destroyed, a duplicate will be issued by Nibley City upon presentation of a receipt showing the payment of the license fee for the current year and a payment for each duplicate as established by resolution of the City Council.
 3. Tag Not Transferable: Dog tags shall not be transferable from one dog to another, and no refunds shall be made on any dog license fee because of death of the dog or the owner leaving the city before expiration of the license period.

19.04.010 Definitions

SERVICE ANIMAL: An animal which is individually trained to perform tasks to assist a person with disabilities, regardless of whether they have been licensed or certified by a state or local government. This does not include emotional support, therapy or comfort animals.

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19.28.50 Basis For Issuance Of Conditional Use Permit

- A. A conditional use permit shall be approved if reasonable conditions are imposed to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, then the conditional use may be denied. Substantial mitigation shall not mean complete elimination of all detrimental effects.
- B. The granting of a conditional use permit shall not exempt the application from other relevant provisions of this or other ordinances of the Nibley City, or other state, federal, fire or building standards. All proposed uses shall comply with the regulations and conditions specified in this title for such use.
- C. The City shall consider the following, plus other adopted standards in order to mitigate any detrimental effects of a conditional use application.
 1. Additional Standards for Conditional Uses for Residential Zones:
 - a. All Conditional Uses within Residential Zones shall comply with all conditions set forth in this Title applicable to all conditional uses, Nibley City Code, Nibley City Design Standards and Specifications, and any applicable state or federal law
 - b. Traffic and Connectivity
 - 1) Roadways and intersections shall maintain a Level of Service (LOS) C. Conditional Use Applicants shall be required to make any road updates in order to ensure the roadway will maintain LOS C.
 - 2) Site plans must comply with the Transportation and Trails Master Plan.
 - c. Applicant may be required to limit noise associated with the conditional use that emanates beyond their property boundaries to less than 50 dBA.
 - d. Applicant may be required to limit light associated with the conditional use that emanates beyond their property boundaries to less than 0.01 foot-candles.

- e. Parking
 - 1) Applicant shall provide off-street parking for the proposed use. Parking may be contained in a driveway, RV pad, or parking lot.
 - 2) Applicant may be required to provide off-street accommodation for delivery and pickup of materials and supplies associated with the Conditional Use.
 - 3) Other Parking requirement shall comply with NCC 19.24.160
- f. Hours of operation: Conditional Uses shall not operate, or cause outside disturbance from 10:00 p.m. to 7:00 a.m.
- g. Short-term rentals
 - 1) All short-term rentals shall be inspected by the Fire Marshal annually to insure each home meets residential fire standards.
 - 2) Shall provide a minimum of two 90-gallon garbage cans and one recycling can issued by Logan Environmental Services.
 - 3) Only one Short-term rental shall be allowed for each property.
- 2. Additional Standards for Conditional Uses in all Zones
 - a. All Conditional Use Application shall comply with underlying zoning requirements as listed in this Title.
 - b. Traffic and Connectivity
 - 1) Roadways and intersections shall maintain a Level of Service (LOS) C. Conditional Use Applicants shall be required to make any road updates in order to ensure the roadway will maintain LOS C.
 - 2) Site plans must comply with the Transportation and Trails Master Plan.
 - 3) Applicants may be required to provide an additional vehicle access to the site for one or more of the following reasons
 - 1. There is only one vehicle access road to the site
 - 2. Allow for greater emergency access to the site
 - 3. Provide for better connectivity and enhance the safety of surrounding roadways and intersections.
 - 4. Construction access to minimize impact to existing homes and infrastructure
 - c. Utilities
 - 1) Utility lines shall be updated to comply with water, sewer and stormwater master plans within the application property and adjacent rights-of-way.
 - 2) A conditional use permit shall only be granted if the City can reasonably supply water and sewer services to the applicant for their proposed use. The City may require an applicant to turn over water shares or water rights in order to allow the City to provide long term water service to the site.
 - 3) Applicants shall connect to service lines needed to supply the use of an application. If no utility lines are available or current utility lines and services are determined to be insufficient for the proposed use by the City Engineer, the applicant shall build or provided plans for

the needed infrastructure before a conditional use permit may be granted.

- d. All buildings shall comply with fire code and are subject to inspection of the Fire Marshall before a business license and conditional use permit is given. New buildings shall be inspected by the Fire Marshal before Occupancy can be given and inspection must be passed annually thereafter.
 - e. Hours of Operation: The city may put limits of hours of operation from 7:00 a.m. to 10:00 p.m. on a conditional use application to mitigate noise and traffic to nearby residential zones.
 - f. All site plans shall be approved by the City's Engineer and Public Works departments. All site plans shall comply with Nibley City Design Standards and all projects located in Commercial and Neighborhood Commercial Zone shall comply with Nibley City Design Standards for Commercial and Institutional Use.
 - g. The City may require the placement of fences or walls to enhance security and mitigate aesthetic or other impacts at facilities adjacent to residential areas.
 - h. In Commercial Zones, warehousing and storage may be allowed as part of business if it is attached to offices or retail.
- D. The proposed use shall not lead to the deterioration of the environment of the general area, nor will produce conditions or noises or emit pollutants of such type or of such a quantity so as to detrimentally effect, to any appreciable degree, public and private properties, including the operation of existing uses thereon, or the health and safety of persons in the immediate vicinity of the community or area as a whole.
- E. The City may charge a conditional use applicant the cost of engineering, legal, or other professional review of the application.

19.34.010 Intent

The intent of these regulations is to protect and preserve Nibley City's rural heritage while allowing multiple land uses, including agricultural and residential, within city boundaries.

19.34.030 Residential Lots Less Than Twelve Thousand Square Feet and Multi-family dwellings

Single-family residential lots that are less than twelve thousand (12,000) square feet and two-family or multi-family housing units, are permitted the following animals:

- A. Animals kept as household pets are permitted and are subject to each of the following limitations:
- 1. The maximum number of dogs per household is two (2) dogs.
 - 2. The maximum number of cats per household is two (2) cats.
 - 3. The combination of dogs and cats per household shall not exceed two (2) animals.
 - 4. Offspring less than six (6) months old of permitted household pets shall not be counted or regulated.

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NCC 19.34 shall govern what animals are permitted or are required to obtain a conditional use permit.

Applicants must provide a plan on how to mitigate noise, waste, dust or other neighborhood impacts, including proper housing and waste disposal.

Applicant must also provide sufficient information that the proposed property is sufficiently sized to house the proposed animal.

All animals must be contained on the property. The Land Use Authority may require that animals that cause noise at night or early morning, like rosters, must be contained inside a structure or building that blocks the sound between 10:00 p.m. and 7:00 a.m.

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In this chapter:

HOUSEHOLD PET: A domesticated animal, such as a dog, cat, bird, fish, or turtle that is traditionally recognized as a companion animal and is kept in the home for pleasure rather than for commercial purposes.

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5. Service animals are not considered household pets and are not subject to the above restrictions.
6. Other household pets not listed, which are legal per State and Federal Laws, are permitted if such animals are housed at all times within the primary dwelling unit. All other animals not specifically permitted are prohibited.

19.34.040 Residential Lots Greater Than Or Equal To Twelve Thousand Square Feet And Less Than 0.75 Acre

Single-family residential lots that are greater than or equal to twelve thousand (12,000) square feet and less than 0.75 acre are permitted the following animals:

A. Animals kept as household pets are permitted and are subject to each of the following limitations:

1. The maximum number of dogs per household is two (2) dogs.
2. The maximum number of cats per household is four (4) cats.
3. The combination of dogs and cats per household shall not exceed four (4) animals.
4. Offspring less than six (6) months old of permitted household pets shall not be counted or regulated.
5. Service animals are not considered household pets and are not subject to the above restrictions.
6. Other household pets not listed, which are legal per State and Federal Laws, are permitted if such animals are housed at all times within the primary dwelling unit. All other animals not specifically permitted are prohibited.

B. The following animals are permitted with the following maximum number of animals per lot:

1. Two (2) female or wether pygmy goats.
2. Two (2) lambs less than eight (8) months old.
3. Two (2) turkeys.
4. Six (6) rabbits.
5. Six (6) hen chickens.
6. Eight (8) pigeons.
7. Six (6) ducks.
8. Eight (8) game birds such as quail or pheasants.

C. A minimum lot size of eighteen thousand (18,000) square feet is required for subsections (B)(1), (B)(2), and (B)(3) of this section.

Offspring less than six (6) months old of animals listed above shall not be counted or regulated.

A combination of the animals listed in subsection B of this section is permitted on each lot with the following provisions:

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Applicants may be granted a conditional use permit that waives the above limitations for a service animal, such as a guide dog, or an animal that is being trained to provide such assistance.

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1. For lots greater than or equal to twelve thousand (12,000) square feet and less than or equal to 0.5 acre, two (2) different species are permitted at any one time.
2. For lots greater than 0.5 acre and less than 0.75 acre, three (3) different species are permitted at any one time.

The animals permitted by subsection B of this section are independent of, and in addition to, the household pets permitted by subsection A of this section.

19.34.050 Residential Lots Greater Than Or Equal To 0.75 Acre

Single-family residential lots that are greater than or equal to 0.75 acre are permitted the following animals:

A. Animals kept as household pets are permitted and are subject to each of the following limitations:

1. The maximum number of dogs per household is two (2) dogs. A kennel license which meets the requirements of 9.02.050, may be approved by designated Nibley City Staff for a third dog.
2. The maximum number of cats per household is four (4) cats.
3. The combination of dogs and cats per household shall not exceed six (6) animals.
4. Offspring less than six (6) months old of permitted household pets shall not be counted or regulated.
5. Service animals are not considered household pets and are not subject to the above restrictions.
6. Other household pets not listed, which are legal per State and Federal Laws, are permitted if such animals are housed at all times within the primary dwelling unit. All other animals not specifically permitted are prohibited.

B. The following animals are permitted at a maximum rate of one hundred (100) large animal points per acre. Large animal points are assigned based on the following table:

Offspring less than eight (8) months old of a permitted large animal shall not be counted or regulated.

C. The following animals are permitted at a maximum rate of one hundred (100) small animal points per acre. Small animal points are assigned based on the following table:

Animal	Small Animal Points

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Commented [LR6]: Rob, can you please review if this would be allowed under the ADA?

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Rabbit	10
Turkey	10
Duck	10
Goose	10
Hen chicken	2
Game bird such as quail or pheasant	2
Pigeon	2

Offspring less than six (6) months old of a permitted small animal shall not be counted or regulated.

Animal	Large Animal Points
Horse, mule, or donkey	75
Cattle: cow, heifer, or steer	50
Pig	50
Ostrich	50
Llama or alpaca	25
Emu	25
Miniature horse or donkey	25
Sheep	15

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Goat: female or wether	15

- D. The animals permitted by subsections B and C of this section are independent of, and in addition to, the household pets permitted by subsection A of this section. In addition, residents are permitted to have any combination of permitted large and small animals as long as the combination does not exceed one hundred (100) large animal points per acre plus one hundred (100) small animal points per acre.

Examples for a 2.0 acre lot:

Maximum number of large animal points permitted = $100 \times 2.0 = 200$

Maximum number of small animal points permitted = $100 \times 2.0 = 200$

Two horses, two llamas ($2 \times 75 + 2 \times 25 = 200$ large animal points), plus one hundred hen chickens ($100 \times 2 = 200$ small animal points) are permitted on a residential 2.0 acre lot.

Two horses and three llamas ($2 \times 75 + 3 \times 25 = 225$ large animal points) are not permitted on a residential 2.0 acre lot.

Twenty five hen chickens, twelve rabbits, and four turkeys ($25 \times 2 + 12 \times 10 + 4 \times 10 = 210$ small animal points) are not permitted on a residential 2.0 acre lot.

These examples are not all inclusive of the possible mix of animals.

E. 19.34.060 Agricultural Lots Greater Than Or Equal To 5.0 Acres

Lots in the agricultural zone that are greater than or equal to five (5.0) acres are permitted the following animals:

- A. Animals kept as household pets are permitted and are subject to each of the following limitations:
1. The maximum number of dogs per household is three (2) dogs.
 2. The maximum number of cats per household is four (4) cats.

Offspring less than six (6) months old of permitted household pets shall not be counted or regulated.

Applicants may be granted a conditional use permit that waives the above limitations for a service animal, such as a guide dog, or an animal that is being trained to provide such assistance.

Commented [LR9]: There is no difference between 19.34.050 and 19.34.060, other than the provision that a third dog does not require a kennel permit. It is Staff's opinion that this section is not necessary.

Commented [LR10R9]: Staff was mistaken with this comment and now recommends adding this section back in. Although the remaining regulations are the same, the point system has significant difference.

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- B. The following animals are permitted at a maximum rate of one hundred (100) large animal points per acre. Large animal points are assigned based on the following table:

Animal	Large Animal Points
Horse, donkey, or mule	50
Cattle: cow, heifer, steer, or bull	50
Pig	50
Goat: billy	50
Ostrich	50
Llama or alpaca	25
Emu	25
Miniature horse or donkey	25
Sheep	15
Goat: female or wether	15

<u>Animal</u>	<u>Small Animal Points</u>
<u>Rooster chicken</u>	<u>5</u>
<u>Rabbit</u>	<u>5</u>
<u>Turkey</u>	<u>5</u>
<u>Duck</u>	<u>5</u>
<u>Goose</u>	<u>5</u>

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<u>Hen chicken</u>	<u>1</u>
<u>Game bird such as quail or pheasant</u>	<u>1</u>
<u>Pigeon</u>	<u>1</u>

Offspring less than twelve (12) months old of a permitted small animal shall not be counted or regulated.

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C. The following animals are permitted at a maximum rate of one hundred (100) small animal points per acre. Small animal points are assigned based on the following table:

D. Offspring less than six (6) months old of a permitted small animal shall not be counted or regulated.

E. The animals permitted by subsections B and C of this section are independent of, and in addition to, the household pets permitted by subsection A of this section. In addition, residents are permitted to have any combination of permitted large and small animals as long as the combination does not exceed one hundred (100) large animal points per acre plus one hundred (100) small animal points per acre.

19.34.070 Required Setbacks For Animal Land Uses

	Street Line, Public/Private	Dwelling Unit; Same Lot	Dwelling Unit; Adjacent Lot	Lot Line
Barns, stables, coops, beehives, and other accommodations for non-household pets (over 50 square feet)	75 feet	35 feet	50 feet	20 feet
Barns, stables, coops, beehives and other accommodations for non-household pets (under 50 square feet)	50 feet	10 feet	35 feet	10 feet
Manure piles, manure pits	150 feet	100 feet	100 feet	20 feet

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19.34.080 Surface Drainage

Surface drainage from barns, corrals, stables, coops and other similar buildings shall not be permitted to drain into a waterway that drains into a natural stream or canal.

Deleted: No manure piles, manure pits, or similar features shall be kept within one hundred feet (100') of any residential dwelling, commercial dwelling, public street, private street, open waterway, natural stream, stormwater system, or canal. Such features shall not be within twenty feet (20') of a property line.

19.34.090 Restraint Of Livestock And Pets

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All livestock and pets shall be so restrained that they shall not damage or destroy adjacent property and must comply with the Nibley City animal control, nuisance and noise regulations, including those listed in NCC 9.02, "Animal Control".

19.34.100 Creation And Continuation Of Nonconforming Uses

Established animal land uses that are impacted by an ordinance change, including rezoning, to a more restrictive animal land use regulation shall be allowed to continue as a legally nonconforming land use (sometimes known as a "grandfathered" land use), with these additional provisions:

1. The established animal land use must have been a legal land use that conformed to the previous, less restrictive regulations.
2. The burden of proving the established animal land use rests on the landowner.
3. The legally nonconforming animal land use will be lost if it is interrupted for more than twelve (12) continuous months. A legally nonconforming use is associated with the property on which it is established.
4. An increased intensity of nonanimal land uses, including subdivision of property and new building construction, on lots with legally nonconforming animal land uses shall not be allowed.
5. Agricultural areas are established to provide areas where the growing of crops and the raising of livestock can be encouraged and supported within the city.

Agenda Item #9

Description	Discussion & Consideration – Ordinance 21-17: Lot Line and Parcel Boundary Adjustment Review Process (Second Reading)
Presenter	Levi Roberts, City Planner
Recommendation	Move to approve Ordinance 21-17: Lot Line and Parcel Boundary Adjustment Review Process, for first reading.
Reviewed By	City Manager, City Planner, City Attorney, Planning Commission

Background:

September 24 Update

During the first reading for this item, Mayor Dustin pointed out a concern that the County Recorder would record anything that would come to him, including lot line and parcel boundary adjustments, regardless of the City's position. The City could only act in an advisory role. Regarding this matter, Staff consulted with the City Attorney, who offered the following explanation:

I think there's a couple of ideas in tension. One is that the city has the right to review and approve certain boundary adjustments before they take effect. The other is the county's right and obligation to record whatever people present to them without question.

We can't force the county to refuse to record boundary agreements or metes and bounds deeds or other similar things. It's a similar issue that we can't prevent someone from writing a deed to subdivide their property without doing a subdivision.

But if we have a process on the books that requires property owners to come to city for approval before recording, we can tell people who ask that they should come to us before recording. Further, it makes it not the city's fault if someone buys a parcel that we didn't approve and then complains when we say it's non buildable or has zoning restrictions or needs more written done. The fact that we had a process in place that the owner didn't follow, and there's no record of city approval of the parcel, could put a prospective buyer on notice that there might be something sketchy with the property.

Based upon this explanation, Staff recommends, concurrent with the Planning Commission Recommendation, that Ordinance 21-17 which institutes a Staff level

review process for lot line and parcel boundary adjustments within the limits of State Code, will help ensure greater conformity of the City's Land Use Ordinances and recommends approval of the ordinance.

One of the Planning Commission goals for 2021 is to review requirements for lot line adjustments and subdivision amendments. In addition, HB 409, passed by the Utah State Legislature this year, adjusts and clarifies certain requirements for subdivision plat amendments and parcel boundary adjustments. In particular, the following changes have been made to Utah State Code:

- HB 409 clarifies what qualifies as a parcel boundary adjustment vs. a lot line adjustment. Boundary adjustments are adjustments of the boundaries between parcels that are not part of a subdivision and generally do not need city approval, while lot line adjustments are adjustments of lots that are part of a subdivision and constitute a subdivision plat amendment.
- HB 409 provides that cities can review boundary line adjustments if the city adopts an ordinance with the following terms:
 - Boundary line adjustments are reviewable for parcels with dwellings;
 - The review is limited to ensuring the adjustment will not result in lots that violate applicable land use and zoning ordinances;
 - Within 14 days of submission, the adjustment is reviewed and either approved or the city sends a notice explaining the specific reasons why it was not approved, with a statement that the adjustment will be approved if the deficiencies or missing information are corrected.

Currently, Nibley City Code does point to State Code for approval of subdivision plat amendments, but provides an exemption for lot line adjustments whether they are part of a subdivision or not. Specifically, NCC 21.08.030 provides:

An agreement to adjust lot lines between adjoining properties, whether in a subdivision or on unsubdivided parcels of land, may be executed by the owners of record of said properties and recorded upon execution, if the following conditions are met:

- 1. No new lot results from the lot line adjustment.*
- 2. No previously existing lot is eliminated as a result of the adjustment.*
- 3. If the properties to be adjusted are in a subdivision, the lot sizes, frontages and configurations are consistent with this title and NCC 19.*
- 4. No lot is made undevelopable without a variance or other special consideration.*
- 5. All property owners directly affected by the lot line adjustment give their consent.*
- 6. The lot line adjustment does not result in a remnant piece of land that did not exist previously.*
- 7. The lot line adjustment does not result in the violation of any applicable zoning ordinance.*
- 8. The lot line adjustment does not substantially alter legal lots that may otherwise need further review by the Planning Commission or City Council in the form of a subdivision amendment.*
- 9. Provided the above conditions are met, no municipal land use authority approval is required.*

An amendment to a subdivision plat shall follow the process and standards within Utah State Code 10-9a-6 as amended, and any applicable Nibley City ordinances.

Staff has identified some instances in which lot line adjustments have been recorded for lots that do not meet minimum lot sizes, frontage requirements and other standards. This creates issues for existing and future homeowners. To help prevent issues related to non-conforming or non-buildable lots, Staff recommends a Staff-level review process be developed for both lot line adjustments within a subdivision and parcel boundary adjustments outside of a subdivision. This process would require an application be submitted, including:

- a. A quitclaim deed or boundary line agreement, which complies Utah Code 10-9a to be used for recording the lot line adjustment.
- b. For lot line adjustments, a surveyed, recordable plat that shows the existing and proposed lot lines.
- c. A site plan which shows proposed existing and proposed property boundaries, and any existing easements and structures on the affected properties, including dimensions and setbacks from existing and proposed lot lines.

In addition to the standards currently required (but not currently reviewed by the City), Staff recommends the allowance for non-conforming parcels to complete a lot line/parcel boundary adjustment if the adjustment doesn't decrease the conformance of zoning standards. For example, a ½ lot that is located in an R-1 zone could complete a parcel boundary adjustment to become a ¾ acre lot, even though it doesn't meet the minimum lot size. However, a lot line adjustment which would decrease the lot size of the ½ acre lot in an R-1 zone would not be permitted.

In addition, in accordance with state code, an application for parcel boundary adjustment would only be required if a dwelling is on one of the affected parcels. The review time for application would also be limited to 14 days.

Planning Commission Recommendation

Recommend approval of Ordinance 21-17: Lot Line and Parcel Boundary Adjustments Review Process, with the following edit:

- Under 21.03.080(A)(1)(b), add 'For parcel boundary adjustments, a survey, which describes the differences between the amended and the original parcels.' under the list of required materials

Recommended Finding

1. Instituting a Staff level review process for lot line and parcel boundary adjustments will ensure greater conformity with Nibley City Land Use Ordinances.

ORDINANCE 21-17
LOT LINE AND PARCEL BOUNDARY ADJUSTMENTS REVIEW PROCESS

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

WHEREAS, Utah HB 409 provides that cities can review boundary line adjustments if the city adopts an ordinance with certain limitations; and

WHEREAS, instituting a Staff level review process for lot line and parcel boundary adjustments will ensure greater conformity with Nibley City land use ordinances;

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

1. The proposed amendments to NCC 19.04.010 and 21.08.030 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 _____, 2021.

Shaun Dustin, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

19.04.010 Definitions

LOT: a tract of land, regardless of any label, that is created by and shown on a subdivision plat that has been recorded in the office of the county recorder.

LOT LINE ADJUSTMENT: an adjustment of boundaries between a lot and other lots or parcels.

PARCEL: any real property that is not a lot.

PARCEL BOUNDARY ADJUSTMENT: an adjustment of parcels that are not a lot.

21.08.030 Parcel Boundary Adjustments, Lot Line Adjustments and Amendments to a Subdivision Plat

A. Lot Line and Parcel Boundary Adjustments: An agreement to adjust boundary lines between adjoining properties, where at least one of the properties being adjusted is a lot or where the properties at issue include a dwelling either in a subdivision or on unsubdivided parcels of land, may be applied for by the owners of record of said properties as set forth herein.

1. The following materials shall be submitted with a parcel boundary/lot line adjustment application:

a. A quitclaim deed or boundary line agreement, which complies Utah Code 10-9a to be used for recording the lot line adjustment

b. For lot line adjustments, a surveyed plat, which describes the differences between the amended and the original plat, as provided in UCA 10-9a-6.

c. For parcel boundary adjustments, a survey, which describes the differences between the amended and the original parcels.

d. A site plan which shows existing and proposed property boundary lines, any existing easements and structures on the affected properties, including dimensions and setbacks from existing and proposed lot lines.

2. The City Planner or City Engineer shall approve the application for lot line/parcel boundary adjustment if the following conditions are met:

a. All required materials are submitted.

b. No new lot or parcel results from the adjustment.

c. No previously existing lot is eliminated as a result of the adjustment. This does not apply to parcel boundary adjustments

d. If the properties to be adjusted are in a subdivision, the lot sizes, frontages and configurations are consistent with this title and NCC 19.

e. No lot is made undevelopable without a variance or other special consideration.

f. All property owners directly affected by the adjustment give their consent.

g. The adjustment does not result in a remnant piece of land that did not exist previously.

h. The adjustment does not result in the violation of any applicable zoning ordinance, including restrictions on permissible uses or number and location of dwellings and structures.

i. The lot line adjustment does not substantially alter legal lots that may otherwise need further review by the Planning Commission or City Council in the form of a subdivision amendment.

Commented [LR1]: Only add/amend affected definition in section.

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Deleted: The contiguous land in the same ownership, as recorded in the County Recorder's office, which is not divided by any public highway or alley, including any part thereof subject to any easement for any purpose other than a public highway, street, public right of way or alley. Any land severed from another lot. If that severance makes the latter lot or structures on said latter lot nonconforming, such lot shall or may be occupied by a main building or group of buildings (main and accessory) together with such yards, open spaces, lot width and lot area as are required by this title, and having frontage upon a street or public right of way or private lane. Except for two-family dwellings and multiple-family dwellings, not more than one dwelling structure shall occupy any one lot.

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"Lot" means a tract of land, regardless of any label, that is created by and shown on a subdivision plat that has been recorded in the office of the county recorder.¶

"Lot line adjustment" means an adjustment of boundaries between a lot and other lots or parcels.¶

"Parcel" means any real property that is not a lot.¶

"Parcel boundary adjustment" means an adjustment of parcels that are not a lot.¶

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Commented [RP5]: Wonder if it would be helpful to call these issues out specifically, so to avoid having combinations of property that have more than 1 dwelling unit on it.

- j. Non-conforming lots: notwithstanding the conditions described above, a lot line/parcel boundary adjustment for an existing non-conforming lot which does not result in conformity with the land use ordinance may be approved if the adjustment does not result in a lower level of conformance for any established lot size, frontage or other established standards. For example, if a ½ acre lot located within a zone with a minimum lot size of 1 acre applies for a lot line adjustment which increases the size of the lot to ¾ acre via a lot line adjustment, it may be approved.
- k. Upon approval, the applicant(s) shall execute and record the adjustment with the Cache County Recorder, in accordance with Utah State Code 10-9a.
3. Exemptions from lot line/parcel boundary adjustment application:
- a. A parcel boundary adjustment involving parcels which do not contain a dwelling on any affected properties may be executed and recorded with the Cache County Recorder and is not subject to City approval.
4. A complete application for parcel boundary adjustment must be reviewed by the City Planner or City Engineer within 14 days of submittal.
- B. All other amendments to a subdivision plat not described above shall follow the process and standards within Utah State Code 10-9a as amended, and any applicable Nibley City ordinances.

Deleted: Provided the above conditions are met, no municipal land use authority approval is required.

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