

A Meeting of the Nibley City Council held at Nibley City Hall, 455 West 3200 South, Nibley, Utah, on Thursday, October 28, 2021.

The following actions were made during the meeting:

Councilmember Beus made a substitute motion to deny Resolution 21-24: Amending Fee-in-Lieu for Water Shares for Developments Vested Prior to September 10, 2020. Councilmember Laursen seconded the motion. The substitute motion passed 3-2; with Councilmember Beus, Councilmember Laursen, and Councilmember Sweeten in favor. Councilmember Bernhardt and Councilmember Larsen were opposed.

Councilmember Bernhardt moved to approve the Interlocal Boundary and Future Annexation Area Agreement Between Nibley City and Hyrum City, for first reading. Councilmember Beus seconded the motion.

Mayor Dustin made a motion to amend the Interlocal Boundary and Future Annexation Area Agreement Between Nibley City and Hyrum City; striking 4.b., and amending 4.d. to read;

“Residential uses shall not be located within 660 feet of 4400 south.”

Councilmember Beus seconded the motion. The amendment passed unanimously 5-0; with Councilmember Beus, Councilmember Bernhardt, Councilmember Larsen, Councilmember Laursen, and Councilmember Sweeten all in favor.

The motion passed unanimously 5-0; with Councilmember Bernhardt, Councilmember Beus, Councilmember Larsen, Councilmember Laursen, and Councilmember Sweeten all in favor.

Councilmember Laursen moved to approve the Interlocal Agreement Between Cache County and the City of Nibley for Fire Inspections for Businesses in Nibley. Councilmember Larsen seconded the motion. The motion passed unanimously 5-0; with Councilmember Laursen, Councilmember Larsen, Councilmember Beus, Councilmember Bernhardt, and Councilmember Sweeten all in favor.

Councilmember Larsen made a motion to commit to purchase the Maughan home (465 West 3200 South) for \$400,001 and giving the residents of the home occupancy through the end of the year, 2021. Councilmember Beus seconded the motion. The motion passed 4-1; with Councilmember Larsen, Councilmember Beus, Councilmember Bernhardt, and Councilmember Sweeten all in favor. Councilmember Laursen abstained from voting.

OFFICIAL MINUTES OF THE MEETING
City Recorder Cheryl Bodily took minutes

Opening Ceremonies

Councilmember Beus led the meeting in the Pledge of Allegiance.

Call to Order and Roll Call

Mayor Dustin called the Thursday, October 28, 2021, Nibley City Council meeting to order at 6:30 p.m. Those in attendance included Mayor Shaun Dustin, Councilmember Tom Bernhardt, Councilmember Kathryn Beus, Councilmember Norman Larsen, and Councilmember Kay Sweeten. Justin Maughan, Nibley City Manager, Darren Farar, Nibley City Engineer and Steve Eliason, Nibley City Public Works Director was also present.

Approval of the Previous Meeting Minutes and Current Agenda

Councilmember Sweeten made a motion to the approve the October 28, 2021, meeting minutes and the evening's agenda. Councilmember Larsen seconded the motion.

Ms. Bodily asked for clarification that the motion included the minutes of the October 28, 2021, Executive session. Councilmember Sweeten agreed that her motion included these minutes and amended her motion to include those minutes. Councilmember Larsen said his second still stood.

The motion passed unanimously 5-0; with Councilmember Sweeten, Councilmember Larsen, Councilmember Beus, Councilmember Bernhardt, and Councilmember Laursen all in favor.

Public Comment Period

Mayor Dustin gave direction to the public present and opened the Public Comment Period at 6:33 p.m.

Mike Humphreys of 640 West 2880 South expressed concerns with fiber to the premise. He said fiber to the premise was an expensive ordeal and would end up falling to the taxpayers. Fiber to the premise would affect every person in Nibley whether they used it or not because it would fall to bond. He said fiber to the premise was a great thing but felt it should be run by a business. He thought the City Council would find that the fiber would fail and didn't feel a city should run this. He said it had failed in the Provo and Orem area.

Melissa Humphreys said "what he said."

Larry Jacobsen of 412 East 2300 South discussed the algorithm for Ranked Choice Voting for multiple winners. His comments included the following written comments, which he distributed to the Mayor, Council, and staff.

“Ranked choice voting with multiple winners.

The ranked-choice algorithm for choosing the winner of a single-winner election is straightforward, and that is the one I have recently focused on. A few days ago, I dug into the ranked-choice algorithm for multi-winner elections. As you know, our upcoming City Council election is an example of a multiple-winner election. I learned a couple of things that were a bit surprising to me. Not bad things, just not what I thought.

Source: <https://www.rcvresources.org/blog-post/multi-winner-rcv>

Quoting the website:

“The Ranked Choice Voting Resource Center (RCVRC) is a division of the Election Administration Resource Center, a nonpartisan 501(c)(3) nonprofit organization. RCVRC provides information, research, and tools to teach the public about ranked-choice voting.”

I got there by Googling “ranked choice voting multiple winners”.

Thing 1.

We talk about the ranked-choice winner as the candidate who receives an absolute majority of the votes ($1/2+$ of the votes) rather than a plurality of the votes (the most votes). For the Mayor race, the winning threshold is $1/2+$. What about our City Council race, which will determine two winners? I learned that that winning threshold is not a majority at $1/2+$, but rather, $1/3+$.

Thing 2.

It’s easy to understand that you will count my second-choice vote in a single-winner race only when my first choice is a loser, or more precisely, when my first choice is eliminated as the low-vote getter in a round where no candidate achieves a majority. I was surprised to learn that in a multiple winner race you might start counting my second choice not only when my first choice is a loser, but when my first choice is a winner, or more precisely, when a candidate achieves the winning threshold. I say might because it seems there is an element of randomness in deciding which voters’ second choices are counted – and which are not – when there is a surplus of first-choice votes for an early-round winning candidate.

Why am I telling you this (in addition to it being a really cool math puzzle)? I am telling you this because you will be asked to certify the upcoming election for City Council. If I were in that spot, I would ensure that I understood the rules of that election before a winner is announced. I don’t pretend to know what you know, so please forgive me if I have raised an issue that you have already covered.

Finally, one of the best things anybody recently said about me is that I am “teachable”, so if I misunderstand the algorithm for ranked choice voting with multiple winners, then as one of your constituents, I ask that you teach me.”

Mike Humphreys asked and was given permission to give additional comments. He said the survey on Facebook was telling the residents about a \$70/charge for fiber in Nibley. He said the Facebook survey was dishonest and misleading. He said the residents would be paying taxes, plus the \$70 fee, plus the cost of install. He said the survey was misleading. Mr. Humphreys offered to answer any questions the City Council had, if needed.

Seeing no further public comments, Mayor Dustin closed the Public Comment Period at 6:43 p.m.

Planning Commission Report

Mr. Maughan described that the Planning Commission was working on short-term rental regulations. They had questions about financial assurances with banking and how subdivision came in and letters of credit and length. Commissioner Obray was helping the Commission figure out the best way to make this happen so the Planning Commission may be bringing some tweaks to the subdivision ordinance to cover these things. He said Council may also see suggested regulations of sidewalks being delayed until after the construction phase. Mr. Maughan said the Planning Commission was workshopping ADUs and two-family dwellings. He said the Council should be seeing these things from the Planning Commission at future meetings.

Discussion & Consideration – Resolution 21-24: Amending Fee-in-Lieu for Water Shares for Developments Vested Prior to September 10, 2020 (Second Reading)

Councilmember Bernhardt moved to approve Resolution 21-24: Amending Fee-in-Lieu for Water Shares for Developments Vested Prior to September 10, 2020. Councilmember Larsen seconded the motion.

Councilmember Beus made a substitute motion to deny Resolution 21-24: Amending Fee-in-Lieu for Water Shares for Developments Vested Prior to September 10, 2020. Councilmember Laursen seconded the motion. The substitute motion passed 3-2; with Councilmember Beus, Councilmember Laursen, and Councilmember Sweeten in favor. Councilmember Bernhardt and Councilmember Larsen were opposed.

Discussion & Consideration – Resolution 21-25: Establishing a Municipal Fiber Optic Network as a City Priority (First Reading)

Mr. Maughan said Resolution 21-25 was for municipal fiber. The Federal and State government were offering grant incentives to try and reach underserved area and to provide fiber to as many people as possible. Providence had been on the wagon and had come up with a project and were in their first phase of construction. Providence was asking Nibley City to join them in a joint grant application to cover the cost of their

construction project. They wanted to access the grants which would allow them to borrow less money and felt the partnership with Nibley would strengthen their grant application. Providence had also discussed this with Millville. The benefit to Nibley was Providence's project would cover the required match and Nibley would be able to have a million-dollar project with no match. In the short-term this would be an extension of Providence's system. Mr. Maughan said this would crack the door and at the current point there would be no financial requirement of Nibley City. Mr. Maughan said he didn't have much hope that the grant would be awarded. Nibley City wasn't being shown as a community that was underserved. Mr. Maughan reported that a survey polling Nibley City residents was put out on Facebook on Monday and they'd had approximately 50 responses from citizens.

Councilmember Beus asked if there would be a financial obligation later? Mr. Maughan said Nibley had the option to pull out of the agreement if the grant were awarded and Providence City may or may not be able to maintain the grant. Councilmember Beus asked what numbers they had been approached with by Providence. Mr. Maughan believed Providence's bond was approximately 8 million dollars and would be done in three to four phases over three to four years. Providence would own the fiber but would not be the actual internet provider; they were planning that they would provide space on their fiber for providers. Providence City's goal was to do away with the \$10.50 base rate that they were charging all residents.

Councilmember Laursen asked about last mile versus middle mile. Mr. Maughan didn't know if Providence qualified. Councilmember Sweeten asked how the service would work for their mobile home park because they didn't receive individual utility bills. Mr. Maughan didn't know the answer but assumed it would be calculated per home.

Councilmember Beus moved to approve Resolution 21-25: Establishing a Municipal Fiber Optic Network as a City Priority and waived the second reading. Councilmember Sweeten seconded the motion.

Councilmember Bernhardt said he was not in favor of this. He didn't think it was something they needed to provide the residents; it was a no-go for him. He felt it was a tax on their residents if they weren't careful and they were serving Providence for a decision they made. Mayor Dustin thought some of the stuff going on in the market was anti-competitive and his concern with getting involved in something like this was that there were alternate technical pathways to get to the same point. There were things coming down the pipeline that could render the whole discussion moot. He didn't see any harm in helping Providence chase the grant but didn't have any interest in building on the City's utilities. Councilmember Laursen said he had similar concerns to Councilmember Bernhardt and Mayor Dustin.

The resolution failed 1-4. Councilmember Beus was in favor. Councilmember Bernhardt, Councilmember Larsen, Councilmember Laursen, and Councilmember Sweeten were opposed were opposed.

Discussion & Consideration – Interlocal Boundary and Future Annexation Area Agreement Between Nibley City and Hyrum City

Mayor Dustin said the bottom line was that he and Mr. Maughan had sat down with Hyrum and discussed that they were comfortable with establishing 4400 South as a boundary. Hyrum had suggested they wanted the boundary to be 4000 South. However, the north side of 4400 South was serviced by Rocky Mountain Power and the south side was served by Hyrum.

Councilmember Bernhardt moved to approve the Interlocal Boundary and Future Annexation Area Agreement Between Nibley City and Hyrum City, for first reading. Councilmember Beus seconded the motion.

Councilmember Beus asked how binding the document was. Mayor Dustin said it could be made binding by the two utilities being on the north and south sides. Councilmember Bernhardt and Mayor Dustin debated how binding the document was and Mayor Dustin discussed that it was morally binding.

The City Council discussed section 4.d. of the agreement. Mayor Dustin did not recall that the provision as stated was what was agreed to:

“Industrial or manufacturing uses shall not be located within 660 feet of 4400 South.”

The Council agreed that provision 4.d. should read as follows:

“Residential uses shall not be located within 660 feet of 4400 South.”

They also discussed that agricultural should be taken out of 4.b. to read:

“The Parties agree that properties within 660 feet of 4400 South should be zoned for residential, or mixed agricultural/residential/commercial uses and have a maximum density of eight equivalent residential units (ERU) per acre, unless a higher density is authorized by the other Party in writing.”

Mayor Dustin made a motion to amend the Interlocal Boundary and Future Annexation Area Agreement Between Nibley City and Hyrum City; striking 4.b., and amending 4.d. to read;

“Residential uses shall not be located within 660 feet of 4400 south.”

Councilmember Beus seconded the motion. The amendment passed unanimously 5-0; with Councilmember Beus, Councilmember Bernhardt, Councilmember Larsen, Councilmember Laursen, and Councilmember Sweeten all in favor.

Councilmember Beus questioned if there were a way to prevent potential bartering between businesses and business playing the two cities against each other. Mayor Dustin suggested Councilmember Beus could find a way to strengthen 3.b. (*“Each Party agrees to not annex nor to encourage, entertain, or accept a petition for annexation of any property that is located on the other Party’s side of 4400 South without the prior written consent of the other Party.”*) Councilmember Laursen thought they could strengthen 3 by asking for requirements of notification in zoning before uses happen. Mayor Dustin suggested they pass the agreement as first-reading and have a list of suggestions to pass along with whatever was accepted with the first reading, to Hyrum for their Council to review. The “win” was for each Council to have a signed agreement. Councilmember Laursen questioned the location of the USU facility and said he’d love to have the same sort of agreements with Wellsville, Millville, Hyrum and eventually Logan.

Councilmember Laursen questioned if Nibley’s Annexation Policy Plan included any property south of 4400 South and suggested the plan be amended to reflect the agreement if it were approved. He said this would be a show of good will.

The motion passed unanimously 5-0; with Councilmember Bernhardt, Councilmember Beus, Councilmember Larsen, Councilmember Laursen, and Councilmember Sweeten all in favor.

Discussion & Consideration – Interlocal Agreement Between Cache County and the City of Nibley for Fire Inspections for Businesses in Nibley

Mr. Maughan described that businesses in Nibley City were annually required to renew their business permit, which also included receiving a fire inspection. Every year businesses were required to contact Cache County fire and set up the inspection. Of the 15-20 businesses that did this, they were typically billed less than a half-hour. The agreement sets the rate that is charged to Nibley City for the fire inspection. This cost to the City is passed to the business owner when the business permit was renewed each year. There was a substantial bump in the rate, which was going from \$30 to \$45/hour.

Councilmember Laursen moved to approve the Interlocal Agreement Between Cache County and the City of Nibley for Fire Inspections for Businesses in Nibley. Councilmember Larsen seconded the motion.

Councilmember Bernhardt asked when the businesses would know about the fee and if staff would start making everyone aware they needed the fire inspection? Mr. Maughan described how staff intended to change the business license renewal process and clean up the process. Mr. Maughan described that he felt the fee covered the cost of driving

to the location, conducting an inspection, and driving back. He didn't feel like the previous fee covered the Cache County fire inspector's costs.

The motion passed unanimously 5-0; with Councilmember Laursen, Councilmember Larsen, Councilmember Beus, Councilmember Bernhardt, and Councilmember Sweeten all in favor.

Council and Staff Report

Councilmember Larsen discussed the opportunity he had to meet with the Parks and Recreation Committee. He thanked them for their commitment and efforts.

Councilmember Beus discussed the November meeting schedule with meetings scheduled on Veterans Day and Thanksgiving. Mayor Dustin said it was being proposed to move the November 11th meeting to the 18th of November. The Council clarified that no meeting had been scheduled on Thanksgiving.

Councilmember Sweeten said in the last five months, she'd been able to see the City of Nibley in a slightly different light. It was not at all surprising to see how kind, and generous, and supportive and caring the individuals in the community were. She was appreciative of the care, the concern, the kindness that was shown to her. It had cemented what a strong and remarkable community they had.

Mayor Dustin reported they were still working on a city flag, and he would be bringing ideas to the City Council.

Mayor Dustin reported that they were most likely not going to make their schedule on 3200 south and 2600 south. He said the city was not kept informed of progress and he was angry enough that he'd like to fire the engineer responsible for the project. Their only remedy was to extend the contract to May. Mr. Maughan stated his opinion that this was his problem to apologize for. He promised the City Council that they would have a quality product in the end, that was going to last. Mr. Maughan said he and Mr. Farar and Mr. Eliason would take a hard look at things and improve them. Mayor Dustin said he was going to ask Nibley's attorney to write up a standard contract that had "teeth" in it for liquidated damages. He felt LeGrande Johnson should be paying liquidated damages for the next six months.

Mayor Dustin discussed the upcoming Boonanza and encouraged the City Council to attend and eat Wal-Mart pies.

Mr. Maughan introduced Steve Eliason who'd been promoted to the Nibley City Public Works Director. He said Nibley had an amazing team and the sum of Mr. Eliason and Mr. Farar was far and away better than he'd been as Public Works Director. Mr. Maughan discussed the staff changes that had occurred since he'd become City Manager. He said they'd had quality candidates that would fit into the organization well. He said Nibley

City was also hiring for a new front desk clerk and described shifting duties in the organizations.

Mr. Maughan reported on the snowstorm that had hit and brought down limbs on trees on Nibley City properties. He said most of it had been cleaned, except for Ahnder Park.

Mayor Dustin reported that Hyrum City had been asking Nibley City to change their prosecutor and use their prosecutor. Hyrum's City attorney had called and asked him to look at a proposal. They'd discussed this and Mayor Dustin asked the City Council to be thinking about this.

Mr. Maughan reported that he'd heard from a resident who was very happy with the flashing "No Engine Breaks" signs.

Mr. Maughan reported on Requests for Proposals that were currently out: Ridgeline Park RFP, Consultant to look at impact fees RFP, grant to investigate transfer of development rights ordinance RFP, and progress had been made with the Elkhorn playground. Councilmember Sweeten reported on the playground plans for Elkhorn Park and described that kids tend to physically outgrow typical playground space before their interest in playgrounds left but the playground at Elkhorn would accommodate bigger kids and adults.

Mr. Maughan reported that the properties on 800 West had been listed at \$70,000 and \$75,000. He felt that ultimately the market would tell them what the properties were worth. Offers would be collected until the 8th of November and the goal was to close on those properties before the end of the year.

Mr. Maughan reported on annexation of the Albison property. He said the process would be more difficult than expected. The city attorney had a memo written up and the City Council would be seeing more on this in the future.

Mr. Maughan reported that the Malouf Community Reinvestment Agency was crawling along slowly. Mr. Maughan said he would be going before the mosquito board on November 11. Malouf seemed to have lost focus on moving forward and Mr. Maughan didn't feel Malouf was in a giant hurry.

Mr. Maughan talked about the Nibley City Spooktacular tour and the upcoming showcase ultimate frisbee game between Mt. Crest and Ridgeline High Schools at Ahnder Park on November 3.

Mr. Maughan said Thanksgiving turkeys would be distributed to staff and elected and appointed officials on Monday, November 22.

Mr. Maughan reported that the Nibley City Christmas Party would be on Monday, December 13 at the Champion's room at Utah State University and there would be a local comedian for some entertainment.

Mr. Maughan described that Nibley City was doing well on sales tax. This had surprised Nibley's accountant as well.

Ms. Bodily reported on how and when Nibley City should receive election night returns during the upcoming Tuesday, November 2, 2021, election.

Councilmember Bernhardt moved to adjourn to closed session to discuss the Purchase, Exchange, or Lease of Real Property Pursuant to Utah Code 52-4-205. Councilmember Larsen seconded the motion at 7:59 p.m. The motion passed unanimously 5-0; with Councilmember Bernhardt, Councilmember Larsen, Councilmember Beus, Councilmember Laursen, and Councilmember Sweeten all in favor.

The Council took a five-minute recess before starting the closed session.

The City Council returned from closed session and resumed the open session at 8:43 p.m.

Mayor Dustin described that the City Council meeting had been in closed session to discuss property and real estate and the potential purchase of the Maughan home on the west side of city hall. Mayor Dustin said they discussed committing to purchase the house if they accepted the offer of \$400,001 and giving the residents occupancy through the end of the year.

Councilmember Larsen made a motion to commit to purchase the Maughan home (465 West 3200 South) for \$400,001 and giving the residents of the home occupancy through the end of the year, 2021. Councilmember Beus seconded the motion. The motion passed 4-1; with Councilmember Larsen, Councilmember Beus, Councilmember Bernhardt, and Councilmember Sweeten all in favor. Councilmember Laursen abstained from voting.

The meeting was adjourned at 8:45 p.m.

Attest: _____
City Recorder