



Joint NIBLEY CITY COUNCIL and NIBLEY CITY PLANNING COMMISSION MEETING AGENDA
Thursday, April 27, 2023 – 6:30 p.m.

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

Joint City Council/Planning Commission Meeting

1. Opening Ceremonies (Councilmember Sweeten)
2. Call to Order and Roll Call (Chair)
3. Approval of the March 23, 2023, Regular City Council Meeting Minutes and Executive Session Meeting Minutes and the Current Agenda (Chair)
4. Planning Commission Report
5. Public Comment Period¹ (Chair)
6. **Discussion & Consideration:** A Proclamation Recognizing Arbor Day in Nibley City
7. **Workshop:** Housing Gap

Adjourn Joint City Council/Planning Commission Meeting

Regular City Council Meeting

8. Call to Order and Roll Call (Chair)
9. **Workshop:** Private Public Partnership for Indoor Recreation space
10. **Discussion and Consideration:** Approval of a Contract to Update the Parks, Recreation and Open Space Master Plan
11. **Public Hearing:** Ordinance 23-19: Amending NCC 17.02.010 and 17.02.030- Building Code Adoption and Permit Intake
12. **Discussion and Consideration:** Ordinance 23-19: Amending NCC 17.02.010 and 17.02.030- Building Code Adoption and Permit Intake (First Reading)
13. **Discussion and Consideration:** Ordinance 23-18: FEMA Flood Insurance Rate Map (FIRM) update; Amending NCC 23.06.020 & 23.06.080- Nibley City Flood Control and adopting sections 23.12.010- SEVERABILITY and 23.12.020- CERTIFICATION (First Reading)
14. **Discussion and Consideration:** Ordinance 23-12 — Amending NCC 21.14.040, NCC 21.14.060 and NCC 21.14.070 Regarding Building Permit Issuance in Relation to Required Subdivision Improvements and Completion Assurance, and Form and Method of Guarantee of Improvements (Second Reading)
15. **Discussion and Consideration:** Ordinance 23-09 — Amending 21.12.060: Blocks, Connectivity And Trail Standards (Second Reading)
16. **Public Hearing:** Ordinance 23-13 — Amending NCC 5.02, 5.04, 5.06, 5.08, 5.10, 5.12 and 5.14 Business and License Regulations
17. **Discussion & Consideration:** Ordinance 23-13 — Amending NCC 5.02, 5.04, 5.06, 5.08, 5.10, 5.12 and 5.14 Business and License Regulations (Second Reading)

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

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

18. **Public Hearing:** Ordinance 23-14 — Amending NCC 1.08, 9.02, 9.06, 19.02.110, and 19.34.110 Regarding Nibley City Animal Code Enforcement
19. **Discussion & Consideration:** Ordinance 23-14 — Amending NCC 1.08, 9.02, 9.06, 19.02.110, and 19.34.110 Regarding Nibley City Animal Code Enforcement (Second Reading)
20. **Public Hearing:** Ordinance 23-15 — Amending NCC 7.16.010-050 Noise Regulations (Second Reading)
21. **Discussion & Consideration:** Ordinance 23-15 — Amending NCC 7.16.010-050 Noise Regulations (Second Reading)
22. **Public Hearing:** Ordinance 23-16 — Deleting NCC 15.04.030.H Sewer Lateral Lines and Amending NCC 15.04.040.E Installation of Building Sewer
23. **Discussion & Consideration:** Ordinance 23-16 — Deleting NCC 15.04.030.H Sewer Lateral Lines and Amending NCC 15.04.040.E Installation of Building Sewer (Second Reading)
24. **Discussion and Consideration:** Ordinance 23-17: Amending NCC 21.02.090 regarding Subdivision Fees Administration (First Reading)
25. Council and Staff Report

Adjourn



**Nibley City Council
Agenda Report for
April 27, 2023**

Agenda Item #6

Description	Discussion & Consideration – A Proclamation Recognizing Arbor Day in Nibley City
Presenter	Rod Elwood, Nibley City Parks Manager
Recommendation	Move to approve the Proclamation Recognizing Arbor Day in Nibley City.
Reviewed By	Mayor, City Manager, Parks Manager

Background:

This year celebrates the 51st year of the Arbor Day Foundation in the United States of America. Arbor Day Foundation's oldest program is Tree City USA. It started with 42 communities in 16 states. Today, the program includes over 3,600 communities in all 50 states.

Why do communities become members of Tree City USA?

A thriving urban forest offers many advantages to communities. Here are just a few:

- Trees help absorb the sounds of traffic in urban areas by 40%.
- Neighborhoods with trees are seven to nine degrees cooler than those without.
- Trees reduce energy costs up to 25% by shading buildings and protecting them from winter winds.
- Homes with trees have higher property values.
- Green space plays a major role in improving mental and physical health.
- Planting and maintaining trees absorbs carbon dioxide in the atmosphere, mitigating the effects of climate change.

Nibley City has been a member of Tree City USA for 12 years now. This was one of Mayor Knight's goals to become a Tree City. In this period of time Nibley City has planted over 1000 trees on 30 plus Nibley City properties. This work of planting these trees could not have been accomplished without the help of many different volunteer groups. These groups were as small as four, Cub Scout that were 8 years old to a couple of Heritage Day's service projects that involved a couple hundred people of all ages.

A PROCLAMATION CELEBRATING ARBOR DAY IN NIBLEY CITY, UTAH

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than one million trees in Nebraska; and

WHEREAS, Arbor Day is now observed throughout the nation and the world; and

WHEREAS, trees reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen, and provide habitat for wildlife; and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires, and countless other wood products; and

WHEREAS, trees in our City increase property values, enhance the economic vitality of business areas, and beautify our community; and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal; and

WHEREAS, Nibley City makes great efforts to set the example in planting trees and encouraging citizens to do likewise; and

WHEREAS, Nibley City desires to improve its efforts to commemorate Arbor Day each year; and

WHEREAS, Nibley City has chosen to celebrate Arbor Day 2023 on Friday, April 28, in coordination with National Arbor Day; and

WHEREAS, in commemoration of Arbor Day 2023, Nibley City hosted a tree give away to residents at Nibley City Hall on Tuesday, April 25, 2023.

NOW, THEREFORE, I, Larry Jacobsen, Mayor of the City of Nibley do hereby proclaim Friday, April 28, 2023, to be ARBOR DAY in the City of Nibley, and urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands.

Dated this _____ day of _____, 2023.

Larry Jacobsen, Mayor

Attest: _____
Cheryl Bodily, City Recorder

Agenda Item #7

Description	Workshop – Housing Gap
Presenter	Levi Roberts, City Planner
Recommendation	Receive information and discuss the housing gap across Utah and in Nibley City.
Reviewed By	Mayor, City Manager, City Planner

Background:

There have been a number of recent requests from developers that point to a potential gap in Nibley City Code for opportunities to develop at medium to higher densities. Opportunities to develop housing at various densities impact the opportunity to provide housing which is affordable to low and moderate-income households. Regarding these considerations, the adopted Nibley City Moderate-Income Housing Plan includes the following strategies:

3. Zone or rezone for higher density or moderate income residential development in commercial or mixed-use zones near major transit investment corridors, commercial centers, or employment centers

4. Rezone for densities necessary to facilitate the production of moderate income housing

Currently, within Nibley City Code, the following options are available for various densities

Zone	Density (per net developable acre)
Agricultural (A)	0.2
Rural Estate (R-E)	0.5
Residential (R-1)	1*
Residential (R-1A)	1.33*
Residential (R-2)	2*
Residential (R-2A)	3.63*
Residential-Planned Unit Development (R-PUD)	5**
Mixed Residential (R-M)	10**

*Additional 35% density bonus allowed through Open Space Subdivision. Additional 50% density bonus allowed through Transfer of Development Rights.

**Up to 15 units/net developable acre in R-PUD and 20 units/net developable acre in R-M allowed through Transfer of Development Rights.

In addition to these options, there are provisions in Nibley City Code which allow residential development in commercial and industrial zones as a conditional use, although Planning Commission is considering recommendations to modify these provisions.

The level of density, which allow for the production of affordable moderate-income housing typically exceeds that of traditional Nibley City Residential zoning. Developers frequently request density levels greater than 10 units/acre.

Currently, to develop at higher densities, particularly on smaller portions of land, there are limited options within the City. There is currently a 40-acre minimum for R-PUD subdivisions, which are further limited by the deletion of eligible areas. The R-M zone offers more flexibility, but is currently not allowed anywhere within Nibley City. The recently passed TDR ordinance allows for more flexibility with regards to density, but requires the investment of buying development rights.

The purpose of this discussion is to determine whether to pursue other opportunities to develop at higher densities outside of the current framework of Nibley City Code. If so, the Council and Planning Commission may discuss which areas within Nibley City would be the most appropriate to allow for the additional density.

Adjourn joint Nibley City Council/Planning Commission meeting.

Call 3-27-23 City Council meeting to order

Agenda Item #9

Description	Workshop – Private/Public Partnership for Indoor Recreation Space
Presenter	Chad Wright, Nibley City Recreation Director
Recommendation	Receive information and discuss a private/public partnership for indoor recreation space for Nibley City.
Reviewed By	Mayor, City Manager, Recreation Director

Introduction:

The Nibley City Recreation Department and the Nibley City Parks and Recreation Advisory Committee propose consideration of establishing a Public-Private Partnership for indoor recreation space to better serve the overall health, wellness, and community connection of our residents. This report outlines the benefits of such a partnership, the proposed basic plan for the partnership, and the expected outcomes of a public private partnership. It also mentions alternatives to meeting the same objective with associated considerations.

Background:

Nibley City has a growing population of young active families that are very interested and supportive of creating indoor recreation space. Our residents and the residents of our valley have very few affordable opportunities to benefit from recreation for 5-7 months out of the year (late FALL to early SPRING). This challenge has been particularly accentuated this year by an especially long winter. Mental health professionals, school counselors, and school administrators have reported increased seasonal affective disorder, depression, behavioral issues, and physical health issues throughout the long winters we experience in Nibley.

Initial Challenge:

Data collected in 2017, through several years of the USU wellbeing survey, and other outreach efforts indicate both interest and a willingness to financially support an indoor facility. Our Parks and Recreation Advisory Committee and Parks and Recreation Departments also feel the community will be supportive of creating an appropriate facility to meet our community's needs, however, the initial cost of construction exceeds the current city budget.

Public-Private Partnership (PPP) defined:

A public-private partnership (PPP) is a cooperative arrangement between the public sector (government) and the private sector (businesses or non-profit organizations) to jointly deliver a public service or infrastructure project.

Benefits of Public-Private Partnership (PPP):

1. Accelerated project delivery: PPPs can accelerate project delivery by leveraging private sector expertise and resources. This can be particularly important for critical indoor recreation projects that have significant economic and social benefits.
 - a. It is estimated that the overall cost of the facility construction will cost less to construct now than in the future based on inflationary construction material cost trends.
2. Procurement efficiency: the private sector partner is not subject to lengthy procurement processes that often delay the design and construction of these facilities.
3. Amenities offered may include those not typically supported by tax dollars, that are, however, still highly beneficial for community health and economic development.

Proposed Plan:

The proposed plan for the partnership is for the city to identify a suitable location, and suitable sustainable indoor facility offering that meets community needs and interests through an RFP process. Then we will invite private sector companies and organizations to submit proposals to design, build, and potentially operate or share in the operation and or use of the facility. The private partner will be responsible for financing the construction of the facility, while the city will provide the land through a long-term lease. The private partner will occupy and or operate the facility for a set period, during which time they will recoup their investment through user fees and other revenue sources.

Keys to Success:

1. A PPP that cooperatively offers what our community values and needs
2. A clear and complete contract
3. An appropriate percentage of facility use including “peak times” (especially weekdays 5-9pm) facilitated by the City Recreation Department based on a fair value exchange rate.
4. A suitable facility with a shared use parking lot adjacent to a city park.
5. Reasonable public access supported by an appropriate transportation infrastructure.
6. Low maintenance high revenue amenities

Expected Outcomes:

A Public-Private Partnership for Indoor Recreation Space is expected to have several positive outcomes. First it is in our estimation the fastest solution to providing the community with much-needed indoor recreation facilities. Second, it will create local jobs for youth, young adults, and others in our community. Third, it would potentially drive economic development in the area, assuming we allow other complementary private sector businesses to also build and operate on city land through a long-term lease. Finally, and most importantly, it will help the city meet its recreation needs without placing an additional burden on the city's budget.

Additional Potential Outcomes:

Establishing a facility through a Public Private Partnership would offer a proof in concept for indoor recreation demand that would provide more confidence in support of a City owned and operated indoor facility that would work cooperatively with the PPP facility.

Alternative Solutions Comparison:

	Management	% of Use	Time to Develop	Cost to build
Public Private Partner	PPP or PPP & City	Negotiated	Fastest	Lowest
Bonding	Nibley City	Highest Nibley Use	Months-Years	Lower
*Special Service Dist.	Special Service Dist.	By participating Cities	Several Years	Moderate
Save then Build	Nibley City	Highest Nibley Use	Decades if ever	Highest Overall

***Special Service District:** provides specific public services(recreation) for a defined geographic area, may cover multiple cities. Is generally governed by a board and is supported by dedicated tax funds often as a percentage of population of participating cities.

The Nibley City Capital Projects Finance Plan outlines detailed comparison scenarios of bonding vs. save then build for recreation facilities.

https://nibleycity.com/images/2022_Nibley_City_CFP.pdf

Conclusion:

In conclusion, the Nibley City Parks and Recreation departments and The Nibley Parks and Recreation Advisory committee see value in pursuing the possibility of a public private partnership to create indoor recreation space and see this option as the most expeditious solution to a problem that has serious consequences. We are focused on solving a lack of recreation opportunities that have a detrimental impact on our residents for 5-7 months out of the year and see additional benefits for our community in job creation, increased property values, and potential economic development. We have also identified other communities that have been successful in leveraging the support of the private sector for public benefit. Finally, we are aware of how to make the most of this option and hope to identify Private Partners that match the vision of what our community values.

Request:

If the council sees value in pursuing the possibility of establishing a public private partnership, we would appreciate your support, direction, and council in evaluating opportunities that would eventually be presented to you in greater detail.

Agenda Item #10

Description	Discussion and Consideration: Approval of a Contract to Update the Parks, Recreation and Open Space Masterplan
Presenter	Levi Roberts, City Planner
Recommendation	Move to approve the contract with MGB+A The Grassli Group to update the Nibley City Parks, Recreation and Open Space Masterplan
Reviewed By	Mayor, City Planner, City Attorney, City Manager, Recreation Director, Parks Superintendent, Selection Committee

Background:

Nibley City has budgeted and is planning to update the Parks, Recreation and Open Space Master Plan in the coming months. The Trails plan is anticipated to be updated through a separate process in conjunction with the development of an Active Transportation Plan. Staff recently published a Request for Proposals (RFP) to assist with the development of the Parks, Recreation and Open Space Master Plan. A total of six (6) consultant teams submitted proposals, which were reviewed by a selection committee made up of the following individuals:

- Levi Roberts, City Planner
- Rod Elwood, Parks Superintendent
- Chad Wright, Recreation Director
- Nathan Laursen, City Council
- Kendall Welker, Parks & Recreation Committee
- Matt Logan, Parks & Recreation Committee and Planning Commission
- Karina Brown, Planning Commission

The Committee reviewed and scored the proposals according to the following scoring criteria, which was published in the RFP:

1. Experience: (20 points) Firms will be evaluated according to their current and past experience and the individuals assigned to this project. The experience will cover current and past efforts and their quality in creating Parks and Recreation Master Plans and other related projects.
2. Qualifications of Staff Assigned: (20 points) The professional qualifications and time availability of the staff assigned to manage and conduct the study will be reviewed.

3. Approach: (30 points) The proposal will be reviewed for completeness, organization, innovation, adherence to the described scope, additional duties added to the scope, and soundness of the technical procedure to the project.

4. Project Management: (20 points) A statement of schedule and significant milestones will be reviewed along with the experience and reliability in performing and managing similar work in past projects.

5. Cost: (10 points) The City reserves the right to choose a lower scoring proposal to meet Nibley City budget requirements for the project. The proposed cost should not exceed \$40,000.

Based upon this scoring criteria, the following is an average of scores for each consulting firm that submitted:

Firm, Average Score

MGB+A, 83.47

Psomas, 79.40

Blu Line, 77.05

Sunrise, 72.92

Civil Solutions, 69.25

Io Landarch, 64.38

The contract has been reviewed and approved by Rob Patterson, Nibley City Attorney.

The selection team recommends awarding the contract to MGB+A. This firm exhibited exceptional expertise in developing Parks & Recreation Master Plans and similar related projects and there was consensus among consultant team members that they are the most equipped to assist with this effort. The Draft Contract is included in the meeting packet.

**NIBLEY CITY, UTAH
CONTRACT FOR PROFESSIONAL SERVICES**

Nibley City Parks, Recreation & Open Space Master Plan

THIS CONTRACT (The "Contract") is made and entered into effective as of the ____ day of _____, 2023 (the "Effective Date"), by and between Nibley City, Utah, a Utah municipal corporation ("City"), and MGB+A, Inc. a Utah corporation ("Vendor").

On February 6, 2023, City issued the Nibley City Parks, Recreation & Open Space Master Plan REQUEST FOR PROPOSALS (the "Solicitation") for professional services (the "Services"). Vendor submitted a proposal or bid dated March 1, 2023 (the "Proposal") and was selected to provide the Services. This Contract, together with the Contract Documents described herein, is the "Resultant Contract" contemplated in the Solicitation. The City and the Vendor are sometimes referred to in the Resultant Contract collectively as the "Parties" and each individually as a "Party."

1. **CONTRACT DOCUMENTS:** This Contract consists of the totality of all of the following documents, which collectively are referred to as the "Contract Documents," which by this reference are incorporated herein:
 - A. This signed Contract for Professional Services;
 - B. The Professional Services Contract Terms and Conditions
 - C. The Scope of Work
 - D. Project Schedule & Cost Estimate
2. **PRIORITY OF DOCUMENTS:** In the event of a conflict between the Scope of Work and the Terms and Conditions, the Terms and Conditions shall govern. In the event of a conflict between the Scope of Work and this Contract, this Contract shall govern.
3. **SCOPE OF SERVICES:** The Vendor shall provide the City the services described in the Scope of Work, subject to the Professional Services Contract Terms and Conditions.
4. **CONTRACT PRICING:** Contract pricing is \$39,710
5. **TERM OF CONTRACT:** The term of the Contract is one year, commencing on _____ and terminating on _____ unless sooner terminated in accordance with the provisions set forth in the Contract Documents. The City reserves the right, at its sole discretion, to extend the Contract for up to two (2) additional terms of one year each. The total length of the Contract shall not exceed three (3) years.

IN WITNESS WHEREOF, the Parties have executed this Contract effective as of the Effective Date set forth above.

Nibley City, a Utah municipal corporation:

By: _____
City Manager Justin Maughan

Approved as to form:

Attest:

By: _____
Rob Patterson City Attorney

City Recorder Cheryl Bodily

_____, a Utah _____:

By: _____
Its: _____

NIBLEY CITY

PROFESSIONAL SERVICES CONTRACT TERMS AND CONDITIONS

This document contains the terms that will be the General Contract Conditions for the Contract for Professional Services ("CPS") entered into as a result of the Nibley City Parks, Recreation & Open Space Master Plan REQUEST FOR PROPOSALS. This document, and the terms, conditions, and provisions contained herein, shall be incorporated into the CPS and shall be binding on the party awarded the CPS, which contracting party is referred to as the "Consultant" herein, and who may also be referred to as the offeror, contractor, or vendor in this document or in the other Contract Documents. The entirety of the contract with Consultant, including the CPS, this document, the Solicitation, and Consultant's responsive Proposal, is referred to as the "Contract."

ARTICLE 1. SCOPE OF WORK

Consultant shall provide the services described in the CPS Scope of Work (the "Services"). Consultant shall coordinate with and receive the approval of the Contract Administrator regarding the schedule, timing, and progress of the Services pursuant to individual Project Order. All work will be reviewed and approved by the Contract Administrator, to determine acceptable completion. Review and approval by the Contract Administrator shall not relieve Consultant of any liability for defective, non-complying, improper, negligent or inadequate services rendered pursuant to this Contract.

ARTICLE 2. FEES

1. The Contract price and fee for Services shall be as set forth in the CPS.
2. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The City reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the City such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the City shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the City's rights hereunder.
3. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the City may withhold from payment due to the Consultant such amounts as are necessary to protect the City's position for the purpose of set-off until such time as the exact amount of damages due to the City from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

ARTICLE 3. TERM OF CONTRACT

The term of the contract, and any renewals or extensions, shall be as set forth in the CPS.

ARTICLE 4. TERMINATION OF CONTRACT

1. The City has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the City terminates this Contract or any part of the Services as herein provided, the City shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the City any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the City, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the City. Use of incomplete data by the City shall be the City's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall appraise the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for approved Services performed and approved by the Contract Administrator up to the date of such termination, a fee for the percentage of Services actually completed and accepted by the City. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the City, based upon the Scope of Services, the Contract documents, and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each approved task set forth in the Scope of Services and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The City shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the City of any portion of the Services not terminated; or (ii) Consultant's delivery to the City of all Work Product and any unused material supplied by the City, in accordance with Paragraph 3 of Article 4.

ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES

The entire Scope of Services to be performed in accordance with this Contract is set forth in CPS Scope of Services and approved by Project Order. Work which is not included in the Services and Project Order will be considered Additional Services, and shall be allowed only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the City. In the event the Consultant performs such claimed Additional Services without prior written authorization from the City, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING

1. This Contract may not be assigned in whole or in part without the prior written consent of the City, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of this Contract. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Order shall be subject to the prior written approval of the City. Consultant will submit a complete list of subconsultants per Project Order and will update the information on the list during the term of the Contract, should the status or identity of said subconsultants change. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2 nor relieve Consultant of any obligation under this Contract. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

ARTICLE 7. COMPLETENESS AND ACCURACY

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract and shall correct at Consultant's expense all errors or omissions which may be discovered therein. City's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

ARTICLE 8. OWNERSHIP OF DOCUMENTS

All documents including but not limited to data computation, studies, reports, design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the City.

ARTICLE 9. INDEMNIFICATION

1. To the fullest extent permitted by law, the Consultant shall defend, indemnify, save and hold harmless the City and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to defend, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury

to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties that the Indemnitees shall be indemnified by Consultant from and against all Claims other than those arising from the Indemnitees' sole negligence. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. In the event that any action or proceeding shall at any time be brought against any of the Indemnitees by reason of any Claim referred to in this Article, the Consultant, at Consultant's sole cost and upon at least 10 days' written notice from City, shall defend the same with counsel acceptable to City, in City's sole discretion. If Consultant refuses or otherwise fails to defend a Claim under this Article,

3. In the event that a Claim is brought or asserted against Consultant in connection with the Services or Work Product provided pursuant to this Contract, other than a Claim by the City or its insurance company, Consultant shall immediately provide notice to the City of such Claim.

4. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

5. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

ARTICLE 10. INSURANCE

Consultant shall secure and maintain during the life of this Contract the insurance coverages required by the Contract Documents. Consultant shall comply with all terms and conditions related to insurance as required by the Contract Documents.

ARTICLE 11. WARRANTIES

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good and professional quality, meaning performed with that degree of efficiency, skill, and knowledge possessed by those of ordinary skill, competency, and standing in a Consultant's trade, industry, or business; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, professional associates, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and City rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the City under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under

this Contract. The City's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of one (1) year after acceptance of the specific Services.

ARTICLE 12. DISCLOSURES BY CONSULTANT.

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the City's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

ARTICLE 13. CONTRACT ADMINISTRATOR

The City's Contract Administrator for this Contract shall be the City Manager or his/her designee(s).

ARTICLE 14. NOTICE

1. All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

City: Justin Maughan, City Manager
455 W 3200 S
Nibley, Utah 84321
Facsimile: (435) 753-1510

With a copy to: Johnson, Patterson & Yellowhorse DBA
PO Box 831
Pleasant Grove, UT 84062
Att'n: Rob Patterson
Facsimile: (801) 261-3503
Email: rob@publicprivatelaw.com

Consultant: _____

Facsimile: () _____

Email: _____

With a copy to: _____

Facsimile: () _____

Email: _____

2. A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received.

3. Notices sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission.

4. Notices may be sent by email as a matter of courtesy, but email is not an acceptable means for meeting the requirements of this section unless otherwise agreed in writing. If notice is accepted by email, the notice shall also be sent by regular mail to the recipient at the above address, unless otherwise agreed in writing. Notices permitted to be transmitted by email shall be deemed received on the date the recipient accepts or acknowledges receipt.

ARTICLE 15. GENERAL PROVISIONS

A. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the City to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The City's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

B. PUBLIC RECORDS. Consultant's records reviewed or audited by the City pursuant

to this Contract shall not be deemed records owned or under the control of the City unless such records are Work Product. If Consultant provides records to the City in addition to or beyond Work Product, Consultant shall be responsible for providing a written claim of business confidentiality with the records in order to claim the records as non-public under state law.

C. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto, and the other documents incorporated into and made part of this Contract, are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as the full and complete agreement of the Parties.

D. ATTORNEYS' FEES. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or an account of any breach or default hereof, or otherwise seeks to enforce the terms of this Contract, whether by mediation, arbitration, or otherwise, the prevailing Party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses (including expert witness fees), determined by the arbitrator or court sitting without a jury, which fees shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

E. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services and terms specified herein.

F. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Utah, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Cache County, Utah District Court and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

F. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the City; (c) not be entitled to any City sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

G. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The City shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The City will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The City shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

H. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

I. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the City that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants and professional associates, will comply with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this Contract.

J. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

K. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

L. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

M. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the City that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program. Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The City retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The City may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The City will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USC § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements.

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Utah by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

N. CANCELLATION FOR CONFLICT OF INTEREST. The City may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

O. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

P. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the City, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

Q. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the City requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the City.

R. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the City and shall not be used or released by Consultant or any other person except with the prior written permission of the City.

S. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

T. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, the conflict shall be resolved according to the priority set forth in the CPS.

U. LIQUIDATED DAMAGES. In the event of any delay by Consultant in the performance required by this Contract, the City and Consultant agree that actual damages would be difficult to measure, and that liquidated damages in the amount of \$100.00 for each calendar day of delay are a reasonable projection of actual damages for such delay. In the event of such delay, the City may elect to immediately terminate the Contract by written notice to Consultant and:

1. If the Contract is not terminated, Consultant shall continue performance and be liable to the City for the liquidated damages until the products are delivered or services performed; and
2. In the event that the City exercises its right of termination, Consultant shall be liable to the City for liquidated damages until such time the City may reasonably obtain delivery or performance of similar supplies or services.

ARTICLE 16. FUNDS APPROPRIATION

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the City and the City Council does not appropriate funds to continue this Contract and pay for charges hereunder, the City may terminate this Contract at the end of the current fiscal period. The City agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

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NIBLEY CITY PARKS, RECREATION, AND OPEN SPACE MASTER PLAN – SCOPE DESCRIPTION

TASK BREAKDOWN

The following is an outline of the recommended tasks to prepare the Nibley City's, Recreation, and Trails Master Plan for its continued success. A representative from MGB+A will be at all Steering Committee meetings, project team meetings, and public presentations.

TASK 1: PROJECT COORDINATION

DEFINE ROLES AND RELATIONSHIP

- Set up a Project Team with MGB+A and Nibley City project manager who are responsible for executing the work according to contract.
- Establish a Steering Committee (SC) Committee members could include members of the Nibley City Staff, City Council and Planning Commission members, County Representatives, parks and open space proponents, stakeholders and other community members.

PROJECT MANAGEMENT

- Jay Bollwinkel will be the project manager for the consultant team. Derek Jenson will assist on all project tasks.
- Bi-weekly online meetings with Nibley City's **project manager** (PM) to provide an update on project status, milestones and project percentage of completion. We assume PM will attend all Steering Committee meetings.
 - Adjust schedule and milestones as needed to meet project vision.
 - Refine master plan approach and direction.
 - Review mission statement, goals, and objectives for the project.
- **Steering Committee Meetings** Meet with SC monthly in person to complete this project.
 - Review mission statement, goals, and objectives for the project.
 - Review schedule and milestones
 - Review master plan approach and direction.

Nibley City tasks:

- Set up Steering Committee by selecting and contacting members, convening first meeting.
- Contact members to schedule and attend all Steering Committee meetings.

MGB+A tasks:

- Advise on selection of Steering Committee.
- Prepare agenda and take minutes for all Project Team & Steering Committee meetings.

TASK 2: PUBLIC ENGAGEMENT

During our first meeting with the Steering Committee (SC) we will discuss and brainstorm existing parks, recreation, community open space facilities and programs that exist, and are needed. We will prioritize parks, recreation, and open space elements according to the greatest need.

- Develop a community needs/preference survey questionnaire (20 questions max) for SC review.
- Update draft and post online. Provide link to Nibley City to be included on City website & newsletter.
- Discuss stakeholders and community members for interviews.

We will assist the SC to conduct public input meetings and/or events and coordinate with the SC to determine the appropriate event timing and format for each. We propose two public meetings or events to receive input and one open house to present results.

- Meeting or Event #1: Listen – Gather input from the community. (Invite the City staff and elected officials)
- Meeting or Event #2: Feedback on proposed park and open space locations, and recreation programs.
- We recommend holding meetings or events at Nibley City Offices (or other venue as determined) so it is easy for neighbours to attend.

The meetings/events will be concise and efficient. Sample agendas for each meeting/event are shown below.

Sample Agenda - Public Input **Meeting/Event #1** – Brainstorming

- 7:00 PM Welcome – Introduce SC & consultant team – explain listening/brainstorming process
- 7:15 PM Discuss and brainstorm all needs, wants and desires of the master plan with the group.
 - Encourage participants complete the preference survey questionnaire.
 - Other general issues as discovered during the general session.
- 7:30 PM Breakout Groups (10-15 each) to receive individual input.
 - Document needs, wants and desires.
 - Display SC committee prioritised facility needs and receive input.
 - Create a prioritised list of parks, recreation, and open space needs, wants and desires.
- 8:00 PM Each group presents prioritised list to the overall group and receive input.
- 8:30 PM Each participant places sticker dots on the elements they feel are the most important.
- 8:45 PM Wrap up and announce next meetings/events.

- Summarize input by priority for parks, recreation, and open space facilities needed/wanted.
- Conduct stakeholder interviews. Stakeholders selected by SC.
- Review with SC and refine and/or add elements as needed ready for posting online.
- Review social media, interview and workshop results and existing documents, plans, programs, policies, and related information with the SC.
- Prepare draft parks plan showing existing and proposed parks and open space facilities.

Sample Agenda - **Public Input Open House Meeting/Event #2**

- 7:00 PM Welcome – Introduction to the Master Plan Process – Display Goals and Objectives.
- 7:15 PM Display and explain the maps, graphs, matrices, graphics, and costs.
- 7:30 PM Obtain input from the participants as directed by the SC.
- 8:30 PM Wrap Up/Summary of input received and Nibley City's master plan adoption process.
- 8:45 PM Adjourn.

- Summarize comments taken during public input meeting/event #2 and review with the SC.
- Update draft master plan and cost estimate as directed by the SC.
- Posted online for two weeks.
- Review with the SC and incorporate the relevant input and finalize the master plan.

Present final master plan and cost estimate to the SC for approval prior to Nibley City for adoption.

Product(s)

- Site analysis plan showing existing and potential recreation sites.
- Public Input Workshop and input summary.
- Social media input summary
- Two Steering Committee meetings/events.

Nibley City tasks:

- Collect all applicable materials and deliver to MGB+A including previously collected public input.
- Post link to online survey on website and newsletter.

MGB+A tasks:

- Develop questionnaire and post questionnaire.
- Conduct Public Workshops and summarize workshop results.
- Compile and summarize questionnaire results (from workshop and/or public survey).
- Prepare recommendations for Draft Master Plan.

TASK 3: EXISTING CONDITIONS AND NEEDS ASSESSMENT

Collect information from Nibley City, and other agencies to assemble base data (Cache County Parcel and Zoning Map has most of this information).

- Mapping of existing parks, City land, undeveloped park land, recreation facilities, open space, public school grounds, public and private facilities.
- List of recreation programs hosted by the City or others.
- Conduct an on-site inventory recreational sites to determine their condition:
 - Existing school facilities that are used for community recreation activities.
 - Existing park and recreational facilities and assess their and park element condition.
 - Vacant parcels accessible to the public and that are equitably located.
 - Select parcels for active (flat) and passive recreation.
 - Assess land adjacent to existing recreational activities.
 - Proposed sites as recommended by Nibley City and Steering Committee.
- Gather population, density, and demographic trends from Nibley City and online resources.
- Meet with SC to discuss existing and potential parcels and their possible uses.
- Prepare an analysis map and existing conditions plan.
 - Proposed and undeveloped parks, and open space facilities.
 - Define current level of service and level of service desired assuming build-out conditions for each regional, community, neighborhood and mini park.
 - Define developed and unimproved park land (open space) and determine methods of achieving desired level of service.
 - Compare existing Nibley City recreational activities to the National Recreation and Park Association (NRPA) standards.

- Determine how Nibley City population demographics compare to the NRPA standard demographics and adjust comparison ratios.
- Assess the adequacy of our existing facilities in meeting current and projected needs.
- Recreational uses and facilities shall be identified and classified into distinct areas.

Product(s):

- Base map showing all existing parks, recreation, open space, and schools
- Drainages that can accommodate linear open space to connect to other parks
- Proposed parcels that can accommodate parks, open space, etc.

MGB+A tasks:

- Gather population information
- Analysis and existing facilities map
- Current level of service and level of service desired mapping
- NRPA standard comparison adjusted to Nibley City
- Existing facility assessment

NEEDS ASSESSMENT AND ANALYSIS

INFORMATION SYNTHESIS

Synthesize information collected in the workshop and online survey and prepare relevant maps, charts and matrixes showing resident's attitudes and opinions.

- Project the necessary space and facility requirements for each class and type of park.
 - Determine deficiencies or excesses.
 - Map potential parks. School open space will be listed separately and not factored into the needs assessment.

Product(s):

- Synthesis of community needs and preference survey

MGB+A tasks:

- Community needs and preference survey synthesis.
- Mapping of potential parks and facilities – schools to be listed separately
- Identify existing deficiencies in parks and recreation programs

TASK 4: DRAFT PLAN FRAMEWORK SCENARIOS

Using base maps (Cache County Parcel and Zoning Viewer) of proposed and existing parks and open space land (for preservation), prepare 2-3 framework scenario plans of each parcel showing parks and recreational elements/activities (passive and active) desired by the community.

- Present precedent studies of other communities with similar recreational elements.
- Present scenario plans to SC and receive input. Using a charrette process draw alternative scenarios discussed with the SC during the meeting and receive input.
- Discuss other potential alternative sites if program elements cannot fit on recommended sites.
 - Discuss park site sizing – regional, neighborhood and pocket park and best locations.
- Update plans and present to SC for refinement.

Product(s):

- 2-3 Conceptual Plans for each site for SC review
- 1 Preferred plan presented and refined

TASK 5: DRAFT PREFERRED SCENARIO

Once input is received on scenarios and alternatives, prepared preferred scenarios from rough concepts created during the charrette process.

- Meet with the SC to present the preferred scenarios and receive input.
- Receive input and discuss alternatives.
- Prepare final preferred plans and present to SC for approval.

Product(s):

- 1 Preferred scenario plan presented and refined
- Final framework scenario plan presented for approval

TASK 6: PROJECT & FUNDING IDENTIFICATION

Present potential grants and funding tools available for municipalities in Utah to SC.

- Brainstorm funding sources preferred and prepare a road map for funding applications.
- Prepare funding applications as needed (actual funding application preparation is not included as part of our fee). MGB+A has helped municipalities receive over \$10 million in funding.

Product(s):

- Draft of funding sources available for Nibley City
- Funding applications prepared (not included in this project fee)

TASK 7: OPEN SPACE PRESERVATION STRATEGIC PLAN

Prepare mapping showing open space parcels identified by SC and public input information.

- Organize preservation parcels by category (wetland, flood plain, habitat, steepness, etc. County mapping)
- Determine by code or agency with jurisdiction of category what recreational uses, if any, can occur.
 - Design framework scenario based on findings for preservation and recreation.
 - Identify parcels that would benefit from conservation easement that would preclude future development.
 - Suggest ordinance language that would support preservation of parcel.
 - Meet with the SC to present findings that will guide open space framework scenario development.
- Receive input and discuss alternatives.

Product(s):

- Open Space Mapping by Category
- Guidance for open space framework scenario plan preparation

TASK 8: PARKS FACILITIES MANAGEMENT PLAN

When we complete our site visit we will also schedule time to meet with your parks personnel to discuss parks maintenance and a management plan.

to formulate a management plan.

- Meet with Parks personnel and review maintenance equipment, materials and man power to cover all aspects of parks maintenance.
- We will create a draft facilities management plan.
- Review management plan with parks personnel and include with master plan.

Product(s):

- Site visit to understand maintenance equipment, material and manpower
- Draft management plan and final management plan

TASK 9: COMPILE PLAN FOR ADOPTION

PRELIMINARY MASTER PLAN

MGB+A will integrate comments received from the Draft Master Plan review and refine the document into a Preliminary Master Plan for review.

- Establish cost guidelines for park improvement construction.
- Review Preliminary Master Plan Nibley City for comments and input.
- Review Preliminary Master Plan with Steering Committee.

Once complete we will conduct a town hall meeting where the public can review mapping, graphics and scenario plans and give input.

- Review public input as needed with SC. Integrate in plan as directed.
- Submit Master Plan for review and Nibley City approval

Product(s):

- Preliminary Parks, Recreation & Open Space Master Plan
- City Council/Planning Commission review meeting

MGB+A tasks:

- Prepare cost estimate for Master Plan elements as needed.
- Submit plans, prepare materials for, and attend City review meetings
- Write final Master Plan text and prepare related graphics and maps.
- Provide standard cost guidelines on parks/open space elements.
- Provide digital copies of all Master Plan materials.

OPTIONAL VALUE ADD SERVICES

PLAN ADOPTION, PRESENT AT PLANNING COMMISSION & CITY COUCIL MEETINGS

- Incorporate revisions from public and Steering Committee
 - Review preliminary master plan with PC/CC in working session
 - Update draft master plan to final master plan
- Review draft with Steering Committee
- Final and Approved Master Plan
 - Incorporate final changes
 - Prepare final document for approval
- Send review draft to Steering Committee
 - Update plan and submit for City Council approval

ACTION PLAN GOALS, OBJECTIVES AND POLICIES DEVELOPMENT

ACTION PLAN

- Prepare action plan for parks, recreation, and open space components, including:
 - Future parks - acquisition of land and improvement implementation
 - Open space connections
 - Recreation programs
 - Existing program effectiveness/missing program creation as needed.
 - Cost estimates for parcel acquisition and facility construction.
 - Prioritized to acquire land in growth areas.
 - Recommend zoning changes for targeted properties
 - Phasing plan for parks and recreation elements - priority in growth areas.
 - Alternatives and recommendations for plan implementation.
 - Identify potential funding sources for construction, operation, and maintenance.
- Review with SC for comments and direction.

DRAFT MASTER PLAN

- Prepare schematic drawings, text, and charts in the form of a draft outline and Draft Master Plan.
- Review the draft with the Steering Committee, City, and related others.

Product(s):

- Draft Project Action Plan
- Draft Parks, Recreation, and Open Space Master Plan
- Steering Committee meetings

MGB+A tasks:

- Prepare comparisons of current City recreational opportunities to recommended standards.
- Prepare illustrations of existing recreation services.
- Prepare action plan.
- Prepare draft Master Plan with text, maps, and graphics.

Fee Overview Summary

\$3,710

TASK 1: PROJECT COORDINATION

\$9,475	TASK 2: COMMUNITY ENGAGEMENT
\$9,420	TASK 3: EXISTING CONDITIONS AND NEEDS ASSESSMENT
\$3,680	TASK 4: DRAFT PLAN FRAMEWORK SCENARIOS
\$2,520	TASK 5: DRAFT PREFERRED SCENARIO
\$3,180	TASK 6: PROJECT & FUNDING IDENTIFICATION
\$3,250	TASK 7: OPEN SPACE PRESERVATION STRATEGIC PLAN
\$960	TASK 8: PARKS FACILITIES MANAGEMENT PLAN
\$2,915	TASK 9: COMPILE PLAN FOR ADOPTION
\$600	TRAVEL EXPENSES

\$39,710	TOTAL
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For more details on task breakdown, hourly rates, and assignment of man hours, see the project schedule and cost page.

Optional Value Add Services

Although these services were not outlined in the RFP, we feel that they would be beneficial to the successful long-term implementation of the Parks and Recreation Masterplan. They can be optionally added to the project scope and fee at the city's discretion.

\$4,275	PLAN ADOPTION, PRESENT AT PC & CC MEETINGS
\$1,695	ACTION PLAN – GOALS, OBJECTIVES AND POLICIES DEVELOPMENT

14-Apr-23



Task	Deliverable	Total Fee	May					June				July				August				September					MGB+A	JB	DJ	Zions Bank	SB	Manage. Consult.	LB	Total Fee			
Task 1: Project Coordination			Mondays					1	8	15	22	28	5	12	19	26	3	10	17	24	31	7	14	21	28	4	11	18	25						
Schedule PM bi-weekly PM online meetings	PM Meetings scheduled	\$ 2,915																																	
Set up, review and update schedule	Refined project schedule adjusted monthly as needed.	\$ 265																																	
Review and refine project approach	Final project approach, adjusted as needed	\$ 100																																	
- Establish an Steering Committee	Steering Committee formed	\$ 165																																	
Meet with Steering Committee monthly (4 meetings in Nibley)	Minutes and project updates	\$ 265																																	
Subtotal		\$ 3,710																																	
Task 2: Community Engagement																																			
Meet and coordinate with Steering Committee/City for Public Engagement	Steering Committee meeting to coordinate public engage.	\$ 1,590																																	
- List parks and recreation elements according to greatest need	Prioritized parks and recreation elements list	\$ 265																																	
- Develop a community needs and preference survey	Community needs and preference survey	\$ 265																																	
Public Input Meeting #1	Public Input Meeting #1	\$ 1,590																																	
- Gather input from the community on needs, wants and desires	Input gathered from public	\$ 365																																	
- Break out groups to prioritize needs, wants and desires		\$ 365																																	
- Finalize and present final needs, wants and desires prioritized list		\$ 265																																	
- Encourage participant to fill out preference survey		\$ 165																																	
- Post meeting #1 results on line for 2 week period		\$ 265																																	
Public Input Meeting #2	Public Input Meeting #2	\$ 1,590																																	
- Review draft master plan and supporting materials and receive input	Input gathered from public	\$ 365																																	
- Post draft master plan on line to receive input		\$ 265																																	
- Synthesis input received		\$ 530																																	
Discuss findings with Steering Committee	Data reviewed with Steering Committee	\$ 1,590																																	
Subtotal		\$ 9,475																																	
Task 3: Existing Conditions and Needs Assessment																																			
Collect base data from Nibley City, Cache County and related agencies	Base information collected	\$ 630																																	
- Collect GIS mapping from City/County with all pertinent layers	GIS mapping collected	\$ 365																																	
- Collect existing master plans and received public input	Documentation collected	\$ 365																																	
Conduct on site inventory and analysis of existing parks and open space	Walking audit/photographic reconnaissance	\$ 1,590																																	
Identify potential parcels for future parks and open space (City assist)	Potential parcels identified	\$ 465																																	
Analyze information to determining constraints, opportunities and needs	Constraints, opportunities and needs determined	\$ 365																																	
Identify existing park level of service and compare to NRPA standards	Parks level of service compared to NRPA standards	\$ 530																																	
Compare City demographics to NRPA standards and adjust comparison ratios	City Demographics compared to NRPA and ratios adjusted	\$ 530																																	
Prepare service area analysis	Service area analysis mapped	\$ 465																																	
- Vacant parcels according to size (regional, neighborhood, mini park)		\$ 365																																	
- Opens space areas for preservation		\$ 465																																	
Assess adequacy of existing facilities (data from City)	Existing facility adequacy assessment	\$ 265																																	
Identify gaps in level of service compare to demand analysis	Level of service gaps identified and compared to demand	\$ 365																																	
Recommend facility upgrades	Facility upgrades and amenity guidelines recommendations	\$ 265																																	
Review with Steering Committee and brainstorm proposed parcels	Steering Committee meeting with minutes	\$ 265																																	
Synthesis data gathered from workshop and social media site(s)	Data synthesized	\$ 365																																	
Prepare mapping, charts, matrixes and graphics showing attitudes and opinions	Mapping and documentation prepared	\$ 465																																	
Project necessary space needed to accommodate growth	Expansion area determined	\$ 465																																	
Map potential park space contiguous to neighborhoods	Park space adjacent to neighborhood identified	\$ 465																																	
Map potential connections to trails	Connecting trails and proposed trails identified	\$ 365																																	
Subtotal		\$ 9,420																																	
Task 4 - Draft Plan Freamwork Scenarios																																			
2-3 draft scenario plans of each park/open space	Draft scenario plans	\$ 1,095																																	
- Review precedent studies of similar recreation elements	Precedent studies	\$ 365																																	
- Present scenarios and charrette alternatives and refinements	Updated scenarios and alternatives	\$ 630																																	
Review with Steering Committee	Steering Committee meeting with minutes	\$ 1,590																																	
Subtotal		\$ 3,680																																	
Task 5 - Draft Prefered Scenario																																			
Present preferred scenarios/alternatives	Refined scenario plans	\$ 1,590																																	
- Present scenarios for review and refinement	Updated scenarios and alternatives	\$ 665																																	
Review with Steering Committee	Steering Committee meeting with minutes	\$ 265																																	
Subtotal		\$ 2,520																																	
Task 6: Project & Funding Identification																																			
Present available grants and funding tools	Draft of funding resources	\$ 865																																	
- Review with SC and select funding sources to pursue	Funding resources	\$ 1,590																																	
- Prepare funding resource applications (fee not included)	Funding applications	\$ 725																																	
Subtotal		\$ 3,180																																	
Task 7: Open Space preservation Strategic Plan																																			
Present plan showing open space parcels	Draft open space parcel plan	\$ 265																																	
- Categorized open space by type (wetland, flood plain, etc.)	Categorized open space by type	\$ 465																																	
- Identify parcels for conservation easement	Parcels for conservation easement	\$ 465																																	
- Suggest updated ordinance language for preservation protection	Updated ordinance language	\$ 465																																	
Review with Steering Committee	Steering Committee meeting with minutes	\$ 1,590																																	
Subtotal		\$ 3,250																																	
Task 8: Parks Facilities Management Plan																																			
Site visit to collect inventory of equipment, materials and manpower	Site visit to document existing equipment, materials, etc.	\$ 265																																	
Create a draft facilities management plan	Draft management plan	\$ 430																																	
Review with Parks Personnel	Approved management plan to include in MP	\$ 265																																	
Subtotal		\$ 960																																	
Task 9: Compile Plan for adoption																																			
Acquisition, construction and maintenance cost estimate	Cost estimate	\$ 530																																	
Review preliminary plan with City staff	City staff review	\$ 530																																	

[illegible]

Hourly Rates

\$165 JB = Jay Bollwinkel, MGB+A

\$100 DJ = Derek Jenson, MGB+A

\$120 BR = Susie Becker, Zions Bank

\$120 LB = Lee Bollwinkel, Management Consultant

Steering Committee Meeting

Work Task

Public Meeting

Planning Commission/City Council Meeting

Agenda Item #11 & 12

Description	Public Hearing – Ordinance 23-19: Amending NCC 17.02.010 and 17.02.030 - Building Code Adoption and Permit Intake and Discussion and Consideration – Ordinance 23-19: Amending NCC 17.02.010 and 17.02.030 - Building Code Adoption and Permit Intake (First Reading)
Presenter	Levi Roberts, City Planner
Recommendation	Move to approve Ordinance 23-19: Amending NCC 17.02.010 and 17.02.030 - Building Code Adoption and Permit Intake and waive second reading.
Reviewed By	City Manager, City Planner, Building Inspector

Background:

Chapter 17 of Nibley City Code provides reference and adopts the building code manuals for building construction within the City. The current code, includes an outdated reference to 1994 and 1997 manuals that have been updated several times since. Staff recommends that this reference be updated to adopt building codes consistent with those adopted by the State of Utah. As codes are updated by the State, the City building inspector(s) will use such building codes, when reviewing building permit applications. In addition to this change, a reference to intake by the City Recorder is replaced by the building department, who reviews such applications.

ORDINANCE 23-19

AMENDING NCC 17.02.010 AND 17.02.030- BUILDING CODE ADOPTION AND PERMIT INTAKE

WHEREAS, Nibley City requires building permits within Nibley City boundaries in accordance with building codes adopted for the State of Utah for the safety and benefit of Nibley City residents; and

WHEREAS, such building codes are periodically updated to improve building practices;

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

1. The attached amendments to Nibley City Code 17.02.010 and 17.02.030 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 _____, 2023.

Larry Jacobsen, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

17.02.10 Building Code Adopted

~~A That certain document, copies of which are on file and are open for inspection of the public in the office of the city recorder, entitled uniform building code, 1997 edition, published by the International Conference of Building Officials, including the generic resistive assemblies listed in the fire resistance design manual, fourteenth edition, dated April 1994, published by the gypsum association as referenced in tables 7-A, 7-B and 7-C, and the same are hereby adopted as the code of the city for regulating the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area and maintenance of all buildings or structures in the city, providing for the issuance of permits, and collection of fees therefor; and each and all of the regulations, provisions, conditions and terms of such uniform building code, 1997 edition, volumes 1, 2 and 3, published by the International Conference of Building Officials, and the secondary publications referenced above.~~

A The building codes; structural, electrical, mechanical, plumbing etc as adopted by the State of Utah, with state amendments, are hereby approved and adopted as the building code of Nibley City. Any reference herein to the "Building Code" shall mean the building codes as adopted by the State of Utah with amendments, interpreted by the Authority Having Jurisdiction.

1. Incorporate penalties for violations, see section 103 of above referenced code.

HISTORY

Adopted by Ord. 4-99 on 2/4/1999

17.02.030 Building Permit Required

Application And Plans: A building permit shall be secured from the building department on application accompanied by plans and specifications , which must state the specific nature of the construction or alterations to be made. The plan must be verified by the person who will perform or be in charge of the construction or alteration.

Agenda Item #13

Description	Discussion and Consideration – Ordinance 23-18: FEMA Flood Insurance Rate Map (FIRM) Update; Amending NCC 23.06.020 & 23.060.080- Nibley City Flood Control and Adopting Sections 23.12.010- SEVERABILITY and 23.12.020- CERTIFICATION (First Reading)
Presenter	Levi Roberts, City Planner
Planning Commission Recommendation	A public hearing for this proposed ordinance change was held at the 4-13-23 Planning Commission meeting. Move to approve Ordinance 23-18: FEMA Flood Insurance Rate Map (FIRM) Update; Amending NCC 23.06.020 & 23.060.080- Nibley City Flood Control and Adopting Sections 23.12.010- SEVERABILITY and 23.12.020- CERTIFICATION and waive second reading.
Reviewed By	City Manager, City Engineer, Public Works Director, Building Inspector

Background:

FEMA Flood Insurance Rate Maps (FIRM) update

The Federal Emergency Management Agency (FEMA) recently revised the Cache County Flood Insurance Rate Maps. The maps and accompanying Flood Insurance Study will become effective May 9, 2023.

Prior to the effective date, Nibley city must adopt or revise local floodplain management regulations to reference the revised study date and incorporate any other necessary changes in order to remain in good standing with the National Flood Insurance Program (NFIP). Remaining in good standing with NFIP ensures that residents can purchase or renew flood insurance policies and that Nibley will be eligible for federal disaster assistance.

National Flood Insurance Program (NFIP)

Nibley City participates in the National Floodplain Insurance Program, a program that protects U.S. residents against the financial hardships of flooding. Communities may elect to participate in the NFIP through an agreement with the federal government to adopt and enforce development standards in Special Flood Hazard Areas (SFHA). The intent is to reduce future flood risks, with the federal government making flood insurance available to property owners and renters within participating communities.

There are many reasons for communities to participate in the NFIP, including:

- Making communities more resilient in the event of flooding;
- To protect residents from the risk of financial uncertainty that flooding can bring if flood insurance is not available;
- To allow residents to purchase flood insurance, thereby transferring the financial risk of flooding in exchange for annual premiums; and/or
- To receive federal flood disaster assistance- federal flood disaster assistance may be denied if a community does not participate in the program.

Flood insurance is mandatory for building lenders to loans on buildings located within SFHAs. Some lenders may require flood insurance for properties outside SFHAs as part of their risk management. A community's participation in the NFIP ensures that property owners are able to secure flood insurance.

City staff reviewed current Nibley City Code related to Flood Control (Section 25) and found the need to amend and add certain sections to comply with federal regulations to maintain the City's participation in the NFIP.

ORDINANCE 23-18

FEMA Flood Insurance Rate Map (FIRM) update; Amending NCC 23.06.020 and 23.06.080- Nibley Flood Control and adopting sections 23.12.010- SEVERABILITY and 23.12.020- CERTIFICATION

WHEREAS, Nibley City is authorized by Utah Code sections 10-9a-505 to enact an ordinance regulating land use and development in a flood plain or potential geological hazard area;

WHEREAS, Nibley City is authorized by Utah Code sections 10-9a-534 to enact an ordinance regulating building design elements of one and two family dwellings as a condition for participation in the National Flood Insurance Program (NFIP) administered by the Federal Emergency Management Agency (FEMA);

WHEREAS, Nibley City has elected to participate in the National Floodplain Insurance Program (NFIP) to adopt and enforce development standards in Special Flood Hazard Areas (SFHA);

WHEREAS, Nibley City's voluntary participation in the NFIP allows the federal government to make flood insurance available to property owners and renters within community boundaries;

WHEREAS, to receive federal flood disaster assistance, Nibley City must participate in the National Flood Insurance Program (NFIP);

NOW, THEREFORE, be it ordained by the City Council of Nibley City, Utah, as follows:

1. The City Council finds that there is good cause and that it is in the interest of the public welfare, health, safety to amend NCC 23.06.020 adopting revised Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) and Flood Boundary-Floodway Maps (FBFM).
2. The City Council finds that there is good cause and that it is in the interest of the public welfare, health, and safety to amend NCC 23.06.080 automatically adopting revisions to Flood Insurance Rate Maps (FIRM) and Flood Boundary-Floodway Maps (FBFM).
3. The City Council finds that there is good cause and that it is in the interest of the public welfare, health and safety to adopt NCC 23.12.010- SEVERABILITY.
4. The City Council finds that there is good cause and that it is in the interest of the public welfare, health and safety to adopt NCC 23.12.020- CERTIFICATION
5. All ordinances, resolutions, or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall be in full force and effect immediately upon its approval and adoption.

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

Larry Jacobsen, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

23.06.020 Basis For Establishing Areas Of Special Flood Hazard

The areas of special flood hazard identified by the federal emergency management agency in a scientific and engineering report entitled, "The Flood Insurance Study For Nibley City" dated May 9, 2023, with accompanying flood insurance rate maps and flood boundary-floodway maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this title.

23.06.080 Automatic Adoption

~~Nibley City automatically adopts effective FEMA flood insurance studies (FIS), and automatically adopts effective FEMA flood insurance rate maps.~~

Flood Insurance Rate Maps and Flood Boundary-Floodway Maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

Adopt New Sections 23.12.010- SEVERBILITY & 23.12.020- CERTIFICATION

23.12.010 Severability

~~If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court, the remainder of the ordinance shall not be affected.~~

23.12.020 Certification

~~It is hereby found and declared by Nibley City that severe flooding has occurred in the past within its jurisdiction and will certainly occur within the future; that flooding is likely to result in infliction of serious personal injury or death, and is likely to result in substantial injury or destruction of property within its jurisdiction; in order to effectively comply with minimum standards for coverage under the National Flood Insurance Program; and in order to effectively remedy the situation described herein, it is necessary that this ordinance become effective immediately.~~

~~Therefore, an emergency is hereby declared to exist, and this ordinance, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.~~

Agenda Item #14

Description	Discussion and Consideration: Ordinance 23-12 — Amending NCC 21.14.040, NCC 21.14.060 and NCC 21.14.070 Regarding Building Permit Issuance in Relation to Required Subdivision Improvements and Completion Assurance, and Form and Method of Guarantee of Improvements (Second Reading)
Presenter	Levi Roberts, City Planner
Planning Commission Recommendation	A public hearing for this item was held at the March 16, 2023 Planning Commission meeting. Move to approve Ordinance 23-12 — Amending NCC 21.14.040, NCC 21.14.060 and NCC 21.14.070 Regarding Building Permit Issuance in Relation to Required Subdivision Improvements and Completion Assurance, and Form and Method of Guarantee of Improvements with a recommendation to City Council to explore the ability to secure the letter of credit by a senior lien position on the property
Reviewed By	Mayor, City Manager, City Planner, City Engineer, Planning Commission

Background

Building Permit Issuance and Occupancy (21.14.040)

During the legislative session of 2022, Utah passed Utah Code; Utah Municipal Code Section 10-9a-802. Enforcement (Effective 5/12/2022) regulating a municipality's ability to withhold issuance of building permits and certificate of occupancy under certain conditions. The basis of the Code prohibits a municipality from denying issuance of building permits or certificate of occupancy for reason of incomplete construction of infrastructure improvements if the infrastructure is not essential to meet requirements for fire and building codes if the applicant has posted provided financial assurance for completion of non-essential infrastructure and/or landscaping improvements.

Nibley City Code Section 21.14.040- Building Permit Issuance- conflicts with State Code Section 10-9a-802 requiring an update to reflect Utah Code requirements. City Code 21.14.040 is amended to meet Utah Code 10-9a-802 allowing issuance of building permits and occupancy to structures prior to final completion of infrastructure improvements if all building and fire code requirements are met and completion and warranty surety are provided to the City.

Completion Assurance – Surety (21.14.060)

City staff reviewed City Code regarding the types of surety/guarantee allowed and the minimum period of time that surety must be valid. Surety to the City is to guarantee that improvements are correctly paid for, installed, constructed, and maintained in accordance with Nibley City Design Standards and that the improvements will not fail in any material respect due to workmanship or material through a 1-year warranty period.

City Code Section 21.14.060 is amended to allow 2 methods to determine the amount of surety that is required. One method allows providing surety in the amount of the estimated construction cost for the project with separate and additional surety to guarantee the 1-year warranty period. The other method allows surety in the amount of the estimated cost for construction but restricts reductions for draw down completion to no more than 90% of the estimated cost. The remaining 10% is retained for the 1-year warranty period.

Guarantee of Improvements (21.14.070)

City Code Section 21.14.070 allows 3 forms of guarantee for improvements. The City Code Section is amended to clarify term/duration requirements for each form of surety. The Code update requires a 3-year term for Irrevocable Letters of Credit and terms that do not expire for surety in the form of a Bond or Escrow. This ensures reasonable timeframes for construction and warranty and lessens the amount of staff time needed to track and request extension of guarantee.

ORDINANCE 23-12

AMENDING NCC 21.14040, NCC 21.14.060, AND NCC 21.14.070 REGARDING BUILDING PERMIT ISSUANCE IN RELATION TO REQUIRED SUBDIVISION IMPROVEMENTS AND COMPLETION ASSURANCE, AND FORM AND METHOD OF GUARANTEE OF IMPROVEMENTS

WHEREAS, Nibley City is authorized by Utah Code sections 10-3-702 and 10-3-711(2) and Nibley City Code 21.02.040 (H) to establish the Nibley City Engineering Design Standards and Details providing building, safety, and design standards and regulations.

NOW, THEREFORE, be it ordained by the City Council of Nibley City, Utah, as follows:

1. The City Council finds that there is good cause and that it is in the interest of the public welfare, health, safety, and City to amend Nibley City Code 21.14.040- Building Permit Issuance to align with State Code requirements.
2. The City Council finds that there is good cause and that it is in the interest of the public welfare, health, safety, and City to amend Nibley City Code 21.14.060- Guarantee Of Improvements.
3. The City Council finds that there is good cause and that it is in the interest of the public welfare, health, safety, and City to amend Nibley City Code 21.14.070- Form And Method of Guarantee Of Improvements as presented.
4. All ordinances, resolutions, or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall be in full force and effect immediately upon its approval and adoption.

PASSED BY THE NIBLEY CITY COUNCIL THIS 23 day of March, 2023.

Larry Jacobsen, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

21.14.040 Building Permit Issuance

A. No building permit for construction of any building on any lot within a subdivision shall be issued until after:

1. If no Improvement Completion Assurance is in place, all improvements required by this chapter are completed and accepted by the City; or
2. If an Improvement Completion Assurance is in place that covers all outstanding and incomplete improvements required by this chapter, all such improvements that are essential to meet the requirements for the issuance of a building permit under building code and fire code are completed and accepted by the City.

21.14.060 Guarantee Of Improvements

- A. Prior to the recording of the Final Plat, whereafter lots may be sold, and before the issuance of any building permit within the subdivision, subject to section 21.14.040, the subdivider shall guarantee, by an Improvement Completion Assurance, the installation and construction of the required improvements. Prior to the City's acceptance of the improvements and the final release of the Improvement Completion Assurance, the subdivider shall guarantee, by a Warranty Bond, that the improvements shall be maintained in a state of good repair, free from defective material or workmanship for the Guaranty Period. The provisions of both such guarantees, regardless of form, shall be as approved by the Public Works Director as to the amount of the bond and as approved by the City Attorney as to the form of the guarantee and shall provide for the following:
- B. The Improvement Completion Assurance and Warranty Bond may be provided for in one of the following ways:
 - 1. An Improvement Completion Assurance shall be provided in an amount equal to one hundred percent (100%) of the cost of all improvements, all of which may be released in connection with the completion of improvements as set forth in this chapter, and a separate Warranty Bond shall be provided contemporaneously with the Improvement Completion Assurance in an amount equal to ten percent (10%) of the cost of all improvements; or
 - 2. An Improvement Completion Assurance shall be provided in an amount equal to one hundred percent (100%) of the costs of all improvements, ninety percent (90%) of which may be released in connection with the completion of improvements as set forth in this chapter, and ten percent (10%) shall be retained as the Warranty Bond and shall not be released until after the Guarantee Period as set forth in this chapter.
- C. The cost of all improvements for the Improvement Completion Assurance and Warranty Bond shall be determined by the estimation by the subdivider, subject to verification by the City Engineer. The estimated improvements costs shall include only those costs for which the subdivider is responsible including the installation, improvement, and construction of, and payment for such improvements within the time period required by the City, and based on the circumstances, needs, and development plans of each subdivision. The estimated cost upon which the Improvements Security is based shall not include the subdivision processing fees, the fee for the initial seal coat application for roads built as part of the subdivision, or any improvements for which the subdivider has no responsibility, such as those improvements to be done at another time, those to be done by the City or other entity, or as otherwise agreed upon in the process of approving the subdivision.
- D. The subdivider shall have the right to partial release(s) against the Improvement Completion Assurance providing however no amount or assurance retained, kept, or provided as part of the Warranty Bond shall be released except pursuant to the provisions of this chapter related to release of the Warranty Bond. Any partial release(s) of the

Improvement Completion Assurance shall be permitted only after the issuance of an “Improvements Completion and Acceptance Report” by the City Engineer and the Warranty Bond has been provided. The subdivider must show evidence of payment of all costs for the improvements and show that the lots and the improvements thereto are free from any liens before any release (partial or full) of funds from the Improvement Completion Assurance. The City Engineer may release a portion of this remaining part of the Improvement Completion Assurance (excluding any amount or assurance retained, kept, or provided as part of the Warranty Bond) if, in his opinion, there remains encumbered a sufficient amount of the Improvement Completion Assurance to ensure the completion of the required subdivision improvements.

- E. The Warranty Bond provided to the City is to guarantee that improvements are correctly paid for, installed, constructed, and maintained in accordance with the standards required in this title and Nibley City Design Standards and Specifications, and that the improvements will not fail in any material respect due to workmanship or materials through the Guarantee Period and to secure the City as to the costs of any required corrections of defects of such improvements.
- F. During said Guarantee Period, if all or any part of the required improvements are found not to be correctly installed, constructed and maintained, and paid for according to the standards required in this title and Nibley City Design Standards and Specifications, or if all or any part of the required improvements fail in any material respect due to workmanship or materials, the City shall notify the subdivider in writing of the defects or any other problems and shall make demand on the subdivider that defects/problems be corrected and paid for. If the defects are not corrected and paid for within thirty (30) days the municipality may correct the defects and charge to the subdivider the costs of correcting the defects as provided above, including administrative costs. There shall be no draw(s) made by the subdivider against the Warranty Bond. The cost of correcting any deficiencies must be borne by the subdivider without access to the Warranty Bond.
- G. After eleven (11) months of the Guarantee Period have expired, the subdivider shall call for Final Inspection by the City Engineer. If the required improvements remain substantially free from defects, or other problems, and free from liens, the municipality shall certify such fact to the subdivider and the municipality shall discharge the subdivider of its obligation to the municipality within thirty (30) days from the time of Final Inspection by releasing the Warranty Bond. Any items that need correcting following the Final Inspection must be corrected within thirty (30) days to have the Warranty Bond released. Any items not completed at the end of these last thirty (30) days, or in other words one year from the date of initial acceptance of the improvements, shall require an additional, or extension of the Warranty Bond be established to ensure the completion of any corrections, and/or the City may obtain draw(s) against the Warranty Bond for such purpose.

21.14.070 Form And Method Of Guarantee Of Improvements

- A. The form and method of the guarantee of improvements, for both the Improvement Completion Assurance and the Warranty Bond shall be as approved by the City Engineer as to the amount of the bond, escrow, or letter of credit and as approved by the City Attorney as to the form of said guarantee documents. All guarantee methods shall provide surety in accordance with this Title and may consist in the form of one or more of the following:
1. Bond. The subdivider may furnish and file with the City Recorder a bond issued by a licensed, reputable corporate surety in an amount as required by this ordinance. The bond agreement must include a provision that the bond may only be released, in whole or in part, by an order executed by an authorized officer of the City, subject to the requirements of this chapter.
 2. Escrow. The subdivider may deposit with a licensed, reputable and/or duly chartered insurance company, bank, title company or savings and loan institution in an escrow account an amount as required by this ordinance. The escrow agreement must include a provision that the funds in escrow may only be released, in whole or in part, by an order executed by an authorized officer of the City, subject to the requirements of this chapter.
 3. Irrevocable Letter of Credit. The subdivider may file with the municipality an irrevocable letter of credit from a duly chartered state or national bank or savings and loan institution in an amount as required by this ordinance. The letter of credit must include provisions that the guaranteed credit amount may only be reduced by an order executed by an authorized officer of the City and that the letter shall not expire prior to the approved expiration date, subject to the requirements of this chapter.
- B. Any of the above Forms and Methods for Guarantee of Improvements shall be subject to approval by the City Attorney, as to form and content of the documents used, and shall be signed by the subdivider, the municipality, and the entity providing the surety bond or holding the escrow, or the financial institution providing the letter of credit. The Guarantee of Improvement may include provisions that allow for partial release or reduction of the funds by an authorized officer of the City for partial completion of work as set forth in this chapter, provided that no part of the Warranty Assurance shall be released prior to the expiration of the Guarantee Period. The Guarantee of Improvements, regardless of form, shall contain the following provisions or terms:
1. The subdivider shall not have authority to release or reduce any amount provided with the Guarantee of Improvements, nor shall the subdivider have recourse to the Guarantee of Improvements in order to construct, complete, correct, or repair any improvement.
 2. The City shall be named as the payee or beneficiary, in the event of default or non-performance and shall provide for the City's access to all or any remaining

funds, without the subdivider's approval or consent, for both Improvement Completion Assurance and Warranty Bond purposes, in the event of default or non-performance by the subdivider. In the case of both the Improvement Completion Assurance and Warranty Bond, the provisions shall provide for use of all or any remaining funds by the City in order to complete required improvements and/or make repairs not completed in a timely manner by the subdivider.

3. The subdivider shall agree to pay all administrative costs, legal fees, and other costs of enforcement incurred by the City in connection with enforcing the Guarantee of Improvements and completing or correcting any improvement, and that the subdivider's failure to pay such costs shall allow the City to recoup such costs from the Guarantee of Improvements.
4. An Improvement Completion Assurance shall not expire, nor any amount provided in connection therewith reduced for reason, for a period of at least three years from issuance of the assurance, except pursuant to the release terms set forth in this chapter.
5. A Warranty Bond shall not expire, nor any amount provided in connection therewith reduced for any reason, for the entire remaining duration of the Improvement Completion Assurance and the Guarantee Period.
6. If the subdivider elects to combine the Improvement Completion Assurance and Warranty Bond in one instrument, as permitted by this chapter, the instrument shall contain all requirements applicable to both an Improvement Completion Assurance and a Warranty Bond.

Agenda Item #15

Description	Discussion and Consideration: Ordinance 23-09 — Amending 21.12.060: Blocks, Connectivity and Trail Standards (Second Reading)
Presenter	Levi Roberts, City Planner
Planning Commission Recommendation	Move to approve Ordinance 23-09 — Amending 21.12.060: Blocks, Connectivity and Trail Standards
Reviewed By	City Manager, City Planner, City Attorney, Planning Commission

Background

Council member Laursen has requested a consideration to amend the trail standards included in 21.12.060 to include ‘churches’ as a traffic generator listed to which trails should be provided. In addition to this amendment, Staff recommends a provision which requires that access be provided to and through commercial, institutional or industrial site is developed when a trail extends to the edge of the property. This will help ensure that pedestrian connectivity is provided to such traffic generators and that pedestrian connectivity be provided with new development. It is also recommended to allow for a gate to be installed for security, but the gate would need to be open during hours that the use is accessible to the public.

When this was considered by Planning Commission, it was expressed to research examples of other cities dealing with the issue of walking trails going into commercial property. Staff posed this question to the network of planners in the Utah Chapter of the American Planning Association. The following ordinance examples were offered:

Lehi, UT

Lehi’s connectivity standards in 37.040, which are extensive, include the following provision:

- 5. Nonresidential to Residential Connections. New nonresidential and multi-family residential site plans shall:*
- a. connect all existing street and pedestrian walkway stubs to proposed streets and walkways within the site plan;*
 - b. extend all existing street stubs through a proposed nonresidential or multi-family site plan to an adjacent collector or arterial street*

Saratoga Springs, UT

Saratoga Springs has adopted the following standard:

19.16.03. Site Design Standards, General. The following standards are applicable to all new non-residential, two-family, three-family, and multi-family development: 1. Pedestrian Connectivity. a. All buildings and sites shall be designed to be pedestrian friendly by the use of connecting walkways. b. Safe pedestrian connections shall be made between buildings within a development, to any streets adjacent to the property, to any pedestrian facilities that connect with the property, when feasible between developments, and from buildings to the public sidewalk to minimize the need to walk within the parking lot among cars. c. All pedestrian connections shall be shown on the related site plan or plat.

Sandy, OR

Sandy, Oregon has standards in 17.84.30 to provide for pedestrian connectivity within and through development. Specifically, the following applicable standards are adopted:

C. Where a development site is traversed by or adjacent to a future trail linkage identified within the Transportation System Plan, improvement of the trail linkage shall occur concurrent with development. Dedication of the trail to the City shall be provided in accordance with 17.84.90.D.

D. To provide for orderly development of an effective pedestrian network, pedestrian facilities installed concurrent with development of a site shall be extended through the site to the edge of adjacent property(ies).

E. To ensure improved access between a development site and an existing developed facility such as a commercial center, school, park, or trail system, the Planning Commission or Director may require off-site pedestrian facility improvements concurrent with development.

ORDINANCE 23-09

AMENDING 21.12.060: BLOCKS, CONNECTIVITY AND TRAIL STANDARDS

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

WHEREAS, The adopted Nibley City Parks, Trails, Recreation and Open Space Master Plan recommends
Guaranteeing general pedestrian-connectivity between new developments.;

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

1. The attached amendments to Nibley City Code 21.12.060 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 _____, 2023.

Larry Jacobsen, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

21.12.060 Blocks, Connectivity And Trail Standards

- A. Block Length is defined as the distance along any given road frontage between two intersections with three or more connecting links. Links that connect into a cul-de-sac shall not be considered the termination point of a block length.
 - 1. Blocks shall not be longer than one thousand six hundred feet (1,600'). Blocks intended for business or industrial use shall be designed specifically for such purposes with adequate space set aside for off-street parking and delivery facilities.
- B. Cul-de-sac: Cul-de-sacs shall not exceed one-eighth (1/8) mile in length, except in R-E zones where they shall not exceed one-fourth (1/4) mile in length. If surface water drainage runs into the turnaround due to the grade of the street, necessary catch basins and drainage easements shall be provided. Where a street is designed to remain only temporarily as a dead-end street, an adequate temporary turning area shall be provided at the dead-end street. It shall remain and be available to the public so long as the dead-end exists.
 - 1. The subdivider shall provide a pedestrian right-of-way (ROW) as outlined below linking the cul-de-sac to the nearest adjacent public ROW, park, or school unless expressly prohibited by conflict with previously developed subdivisions or land uses.
 - 2. In the event that this provision requires a pedestrian ROW that terminates adjacent to a compatible or undeveloped land use, viz. agriculture or undeveloped subdivision, the ROW and sidewalk shall be provided to the subdivision property line. Upon development of the adjacent land, the sidewalk and ROW shall be continued from that point through the new subdivision to the nearest public trail or street. If the adjacent property is instead developed as a commercial, industrial or Institutional use, the pedestrian access and ROW shall be continued, with access provided and maintained to the building(s), to a paved parking area, or to another adjacent pedestrian ROW. A gate may be installed on the private property to prevent access from the sidewalk during hours that are not open to the public, but access must remain open during hours that are open to the public.
 - 3. All pedestrian ROWs shall be designed for compliance with the Transportation Master Plan to maximize non-motorized transportation network efficiency.
 - 4. The right-of-way shall consist of a minimum 8' sidewalk. The Developer shall install fencing that complies with Nibley City fencing code on each side of the right-of-way. The ROW shall be dedicated to the City upon completion and acceptance by the Public Works Director.
- C. Alleys: Alleys may be required in the rear of business lots, but will not be accepted in residential blocks except under unusual conditions where such alleys are considered necessary by the planning commission.
- D. Access Roads:

1. Subdividers shall provide sufficient access to the development from an established public road or street. Subdivision of 30 lots or more shall provide two functioning access roads that comply with Nibley City street standards.
2. Access Roads outside of development: If a developer cannot provide sufficient access to a development with adjacent roads, the developer shall construct access road(s) from an improved public road. Access roads shall be a minimum of 22' asphalt and provide a sidewalk built to City Standards. Sidewalks and roads shall be built to Nibley City Design Standards and Specifications and shall be placed where the full roadway shall be built in the future. Sufficient stormwater drainage shall be provided for each access road.

E. Traffic Calming:

1. In developments that contain arterial or collector roadways, developer must provide traffic calming features, as described in Nibley City's Transportation Master Plan, at each entrance/exit of the development along the arterial or collector road. Each traffic calming feature shall be designed to meet projected traffic levels and speeds. Traffic calming features must be approved by the City Engineer.

F. Trails, Bicycles, and Pedestrian Connectivity:

1. Trails, bike paths, and horse trails shall be provided by the Developer in accordance with the City Trails Master Plan and where otherwise necessary as determined by the Approval Authority. Trails should connect traffic generators such as schools, recreation facilities, commercial areas, churches and other gathering areas, parks, future and existing city trails and other significant natural features. Such trails shall be built to City specifications and ROW shall be dedicated for such trails. The trails shall be constructed with the accompanying phase and development, unless the Approval Authority determines otherwise.
2. Bicycle lanes and facilities shall be added to roads and trails according to Nibley Design Standards, Transportation Master Plan and Trails Master Plan.
3. Blocks longer than 660 feet shall provide a pedestrian ROW at minimum 660-foot intervals as outlined below linking the block to the nearest adjacent public or private street, cul-de-sac, park, school, or City trail unless expressly prohibited by conflict with previously developed subdivisions or land uses.
 - a. In the event that this provision requires a trail or other pedestrian right-of-way (ROW) that terminates adjacent to a compatible or undeveloped land use, viz. agriculture or undeveloped subdivision, the ROW and sidewalk shall be provided to the subdivision property line. Upon development of the adjacent land, the sidewalk and ROW shall be continued from that point through the new subdivision to the nearest public trail or street. The right-of-way shall consist of a minimum 8' sidewalk. The Developer shall install fencing that

complies with Nibley City fencing code on each side of the right-of-way. If the adjacent property is developed as a commercial, industrial or Institutional use, the pedestrian access and ROW shall be continued, with access provided and maintained to the building(s) on site, to a paved parking area, or to another adjacent pedestrian ROW. A gate may be installed on the private property to prevent access from the sidewalk during hours that are not open to the public, but access must remain open during hours that are open to the public.

- b. The Approval Authority may make an exception to the requirements if the block street makes a 90-degree connecting turn towards an existing ROW.
- 4. All pedestrian ROWs shall be designed in compliance with the Transportation Masterplan and Trails Master Plan to maximize non-motorized transportation network efficiency.

Agenda Item #16 & 17

Description	Public Hearing: Ordinance 23-13 — Amending NCC 5.02, 5.04, 5.06, 5.08, 5.10, 5.12 and 5.14 Business and License Regulations and Discussion & Consideration: Ordinance 23-13 — Amending NCC 5.02, 5.04, 5.06, 5.08, 5.10, 5.12 and 5.14 Business and License Regulations (Second Reading)
Presenter	Levi Roberts, City Planner
Staff Recommendation	Hold the public hearing. Move to continue Ordinance 23-13 — Amending NCC 5.02, 5.04, 5.06, 5.08, 5.10, 5.12 and 5.14 Business and License Regulations
Reviewed By	Mayor, City Manager, City Planner, City Treasurer, City Attorney

Background

Staff is recommending a number of changes to Nibley City Code Chapter 5- Business and License Regulations. Specifically, the following amendments are recommended:

1. Change penalty for business license violations from Class B misdemeanor to infraction and enforcement procedure to match that of nuisances. This will allow Staff to enforce violations of the ordinance.
2. Joint business licenses. Change provision for joint business licenses, which currently require the City to issue one license for 2 or more businesses that are at the same address and same owner to simply exempt fees for such businesses, while still issuing separate licenses. The purpose of this change is to make the administration of such business licenses simpler.
3. Change appeal authority to administrative appeal officer for business license-related appeals and set forth an appropriate procedure for the appeal proceedings.
4. Set forth a procedure for obtaining a temporary beer license (less than 30 days) in accordance with State Code.
5. Change the investigation for solicitor's and itinerant merchant licenses (temporary) to include a more objective standard, which Staff may conduct, rather than referring to law enforcement.

ORDINANCE 23-13

**AMENDING NCC 5.02, 5.04, 5.06, 5.08, 5.10, 5.12 AND 5.14 BUSINESS AND LICENSE
REGULATIONS**

WHEREAS, Nibley City regulates the operation of businesses within Nibley City boundaries; and

WHEREAS, appropriate processes will ensure that Nibley City's regulations for licensing and otherwise legally operating within the City will be effectively upheld;

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

1. The attached amendments to Nibley City Code 5.02, 5.04, 5.06, 5.08., 5.10, 5.12, and 5.14 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 _____, 2023.

Larry Jacobsen, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

5 Business And License Regulations

5.02 General License Provisions

5.04 Liquor Control

5.06 Taxes

5.08 Solicitors, Canvassers, Peddlers, And Itinerant Merchants

5.10 Construction Contractors

5.12 Offensive Businesses And Facilities

5.14 Sexually Oriented Businesses

5.02 General License Provisions

5.02.010 Definitions

5.02.020 License Assessor And Collector

5.02.030 Business License Required; Penalty

5.02.040 Application For License

5.02.050 License Fee Levied

5.02.060 Payment Dates

5.02.070 Certificate Of License

5.02.080 Transfer Of License Prohibited

5.02.090 Branch Establishments

5.02.100 Joint Business Licenses

5.02.110 Reciprocal Recognition; Delivery Of Goods

5.02.120 Exemptions To License

5.02.130 Revocation Or Denial Of License

5.02.010 Definitions

As used in this title:

BUSINESS: Includes all activities engaged in within the city carried on for the purpose of gain or economic profit, except that the acts of employees rendering service to employers shall not be included in the term business, unless otherwise specifically provided.

EACH SEPARATE PLACE OF BUSINESS: Each separate establishment or place of operation, whether or not operating under the same name, within the city, including a home or other place of lodging if the same is held out by advertisements, listings or otherwise as the establishment or place of operation of a person engaging in the business of selling tangible, personal property at either retail or wholesale, or both, in the city.

EMPLOYEE: The operator or manager of a place of business and any persons employed in the operation of said place of business in any capacity and also any salesperson, agent or independent contractor engaged in the operation of the place of business in any capacity.

ENGAGING IN BUSINESS: Includes, but is not limited to, the sale of tangible personal property at retail or wholesale, the manufacturing of goods or property and the rendering of personal services for others for a consideration by persons engaged in any profession, trade, craft, business, occupation or other calling, except the rendering of personal services

by an employee to their employer under any contract of personal employment.

INTERSTATE COMMERCE: Transacting or transportation of products, services, or money across state borders.

PLACE OF BUSINESS: Each separate location maintained or operated by the licensee within the city from which business activity is conducted or transacted.

WHOLESALE: A sale of tangible personal property by wholesalers to retail merchants, jobbers, dealers or other wholesalers for resale, and does not include a sale by wholesalers or retailers to users or consumers not for resale, except as otherwise specified.

WHOLESALE: A person doing a regularly organized wholesale business and selling to retail merchants, ~~jobbers~~, dealers or other wholesalers, for the purpose of resale.

HISTORY

Adopted by Ord. 1977 Code Code § 9-111 on 1/1/1977

Amended by Ord. 2002 Code on 1/1/2002

5.02.020 License Assessor And Collector

The city treasurer is designated and appointed as ex officio assessor of license fees for the city. On receipt of any application for a license, the city treasurer shall assess the amount due thereon and shall collect all license fees based upon the rate established by resolution. They shall enforce all provisions of this title and shall cause to be filed complaints against all persons violating any of the provisions of this title.

HISTORY

Adopted by Ord. 1977 Code Code § 9-113 on 1/1/1977

Amended by Ord. 2002 Code on 1/1/2002

5.02.030 Business License Required; Penalty

It shall be an infraction or an equivalent civil penalty, subject to penalty as provided in NCC 1.08.010, for any person to transact, engage in or carry on any business, trade, profession, calling or to operate a vending, pinball, or coin operated machine without first receiving the class or type of license required by the city. Civil citations and administrative proceedings shall follow the process set forth in NCC 7.02, except where such process is clearly inapplicable.

HISTORY

Adopted by Ord. 1977 Code Code § 9-112 on 1/1/1977

Amended by Ord. 2002 Code on 1/1/2002

5.02.040 Application For License

1. Contents: All applications for license shall include:
 1. The name of the person desiring a license and name of business.
 2. The kind of license desired, stating the business, calling, trade or profession to be performed, practiced, or carried on.

3. The class of license desired if such licenses are divided into classes.
 4. The place where such business, calling, trade or profession is to be carried on, giving the street number if the business calling, trade or profession is to be carried on in any building or enclosure having such number.
 5. The period of time for which such license is desired to be issued.
2. Coin Operated Machine Device: In the event that the license application relates to a coin operated machine or device, the application shall identify the machine or device to which it applies and the location thereof.

HISTORY

Adopted by Ord. 1977 Code Code § 9-116 on 1/1/1977

Amended by Ord. 2002 Code on 1/1/2002

5.02.050 License Fee Levied

1. Schedule: The city council may from time to time set the fees charged for business licenses by resolution as it deems necessary.
2. Interstate Commerce: None of the license taxes provided for by this section shall place an undue burden on interstate commerce. In any case, where a license fee is believed by a licensee or applicant for license to place an undue burden upon such commerce, they may apply to the license assessor and collector for an adjustment of the fee so that it shall not be discriminatory, unreasonable or unfair as to such commerce. Such application may be made before, at, or within three (3) months after payment of the prescribed license fee. The applicant shall show their method of business and the gross volume or estimated gross volume of business and such other information as the license assessor and collector may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The license assessor and collector shall then conduct an investigation, comparing applicant's business with other businesses of like nature and shall make findings of fact from which they shall determine whether the fee fixed by this section is discriminatory, unreasonable or unfair as to applicant's business and shall recommend to the city council a license fee for the applicant in an amount that is nondiscriminatory, reasonable and fair. If the city council is satisfied that such license fee is the amount that the applicant should pay, it shall fix the license fee in such amount. If the regular license fee has already been paid, the city council shall order a refund of the amount over and above the fee fixed by the city council. In fixing the fee to be charged, the license assessor and collector shall have the power to base the fee upon a percentage of gross sales, or employees, or may use any other method which will assure that the fee assessed shall be uniform with that assessed on businesses of like nature.

HISTORY

Adopted by Ord. 1977 Code Code § 9-125 on 1/1/1977

Amended by Ord. 7-98 on 10/15/1998

Amended by Ord. 2002 Code on 1/1/2002

5.02.060 Payment Dates

All license fees shall be due and payable as follows, except as may be otherwise provided.

1. Payable: Annual fees shall be payable before each calendar year, in advance. The annual license shall date from January 1 of each year and shall expire on December 31 of each year.
2. Due: Annual fees shall be due on January 1 of each calendar year and shall become delinquent if not paid by February 1 of each year.
3. Issued After July 1: One-half (1/2) of the annual fee shall be payable for all licenses issued by the city pursuant to applications made after July 1 of each year, and licenses issued after July 1 shall expire on January 1 of the year following. Payment shall be due upon the date of application approval.
4. Penalty For Late Payment: If any license fee is not paid within thirty (30) days of the due date, a penalty as listed on the current approved Consolidated Fee Schedule shall be added to the original amount thereof. No license shall be issued until all penalties legally assessed have been paid.

HISTORY

Adopted by Ord. 1977 Code Code §§ 9-114, 9-115 on 1/1/1977

Amended by Ord. 2002 Code on 1/1/2002

Amended by Ord. [22-02](#) on 1/27/2022

Corrected by Other. [Consolidated Fee Schedule 2022](#) on 1/27/2022

5.02.070 Certificate Of License

1. Contents: All certificates of license shall be signed by the city treasurer attested by the city recorder, and shall contain the following information:
 1. Name: The name of the person and name of business to whom such certificate has been issued.
 2. Amount: The amount paid.
 3. Type: The type of license and the class of such license, if licenses are divided into classes.
 4. Term: The term of the license with the commencing date and the date of its expiration.
 5. Location: The place where such business, calling, trade or profession is to be conducted.
2. Display:
 1. Required: Every certificate of license issued under this chapter shall be posted by the licensee in a conspicuous place upon the wall of the building, room or office of the place of business so that the same may be easily seen. When such certificate of license has expired, it shall be removed by the licensee from such place in which it has been posted, and no certificate of license which is not in force and effect shall be permitted to remain posted upon the wall or any part of any room within the place of business. If the licensee's business

is such that a license cannot be displayed due to the transient or mobile nature of the business, then the licensee shall carry the license on their person, ready to be shown upon request by an authorized officer during all such time or times while the licensee is engaged in or pursuing the business for which a license is granted.

2. Coin Operated Machine: In the event the license is for a coin operated machine or device, the certificate shall be attached or displayed in the immediate vicinity of the machine for which it has been issued.

HISTORY

Adopted by Ord. 1977 Code Code §§ 9-117, 9-118 on 1/1/1977

Amended by Ord. 2002 Code on 1/1/2002

5.02.080 Transfer Of License Prohibited

No license granted or issued under any ordinance of the city shall be assigned or transferred to any other person. It shall not be deemed to authorize any person other than therein named to do business or to authorize any other business, calling, trade or profession than is therein named, unless by permission of the city council.

HISTORY

Adopted by Ord. 1977 Code Code § 9-119 on 1/1/1977

5.02.090 Branch Establishments

A separate license must be obtained for each separate place of business in the city and each license shall authorize the licensee to engage only in the business licensed thereby at the location or in the manner designated in such license; provided, that warehouses and distributing places used in connection with or incident to a business licensed under this chapter shall not be deemed to be separate places of business or branch establishments.

HISTORY

Adopted by Ord. 1977 Code Code § 9-121 on 1/1/1977

5.02.100 Joint Business Licenses

Whenever any person is engaged in two (2) or more businesses at the same location within the city, such person shall be exempt from additional business license fees under NCC 5.02.050.. Notwithstanding this fee exemption, a business license is required for each business, and an administrative application review fee shall be imposed for each business that requests a business license. The license fee to be paid shall be computed at the highest license fee applicable to any of the businesses being conducted at such location. The sale of beer or any other product or service requiring an additional license shall be subject to such additional licensing requirement. Where two (2) or more persons conduct separate businesses at the same location, each such person shall obtain a license for such business and pay the required license fee for such business.

HISTORY

Adopted by Ord. 1977 Code Code § 9-122 on 1/1/1977

Amended by Ord. 2002 Code on 1/1/2002

5.02.110 Reciprocal Recognition; Delivery Of Goods

1. Exceptions: No license shall be required for operation of any vehicle or equipment in the city when:
 1. Such vehicle is merely passing through the city.
 2. Such vehicle is used exclusively in intercity or interstate commerce.
2. Delivery Of Property: No license shall be required by this chapter of any person whose only business activity in the city is the mere delivery in the city of property sold by them at a regular place of business maintained by them outside the city where:
 1. Such person's business is at the time of such delivery licensed by the Utah municipality or county in which such place of business is situated; and
 2. The authority licensing such business grants to licensees of the city making deliveries within its jurisdiction the same privileges, upon substantially the same terms, as are granted by this section; and
 3. Neither the property delivered nor any of the facilities by which it was manufactured, produced, or processed are subject to inspection by authority of the city for compliance with health or sanitary standards prescribed by the city; and
 4. The delivery truck or other vehicle must prominently display at all times a business license issued by the said licensing authority. This license shall identify the licensing authority by which it is issued, shall indicate that it evidences a license issued thereby, and shall specify the year or term for which it is effective.
3. Certification Of Section: The city recorder shall, at the request of any person, certify a copy of this section to any municipality or county of the state to which a copy has not previously been certified.

HISTORY

Adopted by Ord. 1977 Code Code § 9-123 on 1/1/1977

5.02.120 Exemptions To License

1. Exempt Businesses:
 1. The following shall be exempt from all business license requirements, including fees:
 1. Any business that is operated only occasionally and by an individual who is under 18 years of age.
 2. The following business types shall be exempt from all business license fees under NCC 5.02.050. Notwithstanding this exemption, a business license is

required, and an administrative application review fee shall be imposed for those businesses that request a business license:

1. Any person engaged in business for solely religious, charitable, or other types of strictly nonprofit purpose which is tax exempt in such activities under the laws of the United States or the state, nor shall any license fee be imposed on any person engaged in a business specifically exempted from municipal taxation and fees by the laws of the United States or the state.
2. Any person not maintaining a place of business within the city who has paid a like or similar license tax or fee to some other taxing unit within the state and which taxing unit exempts from its license tax or fee, by reciprocal agreement or otherwise, businesses located in the city and doing business in such taxing unit.
3. Any home-based business which combined offsite impacts do not materially exceed the offsite impact of the primary residential use alone. This exemption shall be made if all of the following conditions are met:
 1. No persons not living in the home are employed by the business.
 2. No client visits are conducted.
 3. Deliveries to support the business are limited to less than three times per week.
 4. No use of hazardous or toxic materials.
 5. The business operations will not result in excessive noise or offensive odors.
 6. The business operations will not result in additional demand of public facilities or services, including water or sewer use.
2. Reciprocal Agreements With Other Agencies: The license assessor and collector may, with approval of the city council, enter into reciprocal agreements with the proper officials of other taxing units, as may be deemed equitable and proper in effecting the exemption provided for in subsection A of this section.

HISTORY

Adopted by Ord. 1977 Code Code § 9-124 on 1/1/1977

Amended by Ord. [22-03](#) on 2/10/2022

5.02.130 Revocation Or Denial Of License

1. Failure To Comply; Unlawful Activities: Any license issued pursuant to the provisions of this code or of any ordinance of the city may be revoked and any application denied by the city council because of:

1. The failure of the licensee or applicant to comply with the conditions and requirements of this code or any ordinance of the city.
2. Unlawful activities conducted or permitted on the premises where the business is conducted.
2. Notice To Licensee: Prior to the revocation of a license or denial of an application to renew business license, the licensee or applicant shall be given a notice which shall state in substance that the city council intends to revoke the business license or deny the application to renew, together with the reason or reasons therefore, at a regular or special meeting of the city council (which shall be at least 10 days and not more than 30 days from the date notice is sent), and that the licensee or applicant has a right to appear, to be represented by counsel, to hear the evidence against them, to cross-examine witnesses and to present evidence as to why the license should not be revoked or the application denied.
3. Not Applicable To Businesses Not Previously Licensed: The preceding subsection shall not apply to applications for licenses for businesses which have not previously been licensed by the city, and such applicants need only be informed that their application has been denied.

5.02.140 Scope of License

No license granted or issued under any ordinance of the city may be used to operate a business larger than the scope of the approved license. If the scope of the business evolves during the tenure of an approved license, the license holder must receive approval again from the city for any changes by applying for a new license.

5.02.150 Business License Appeal Process

Upon payment of the Business License Appeal Fee as currently listed on the Consolidated Fee Schedule, the following process may commence. This appeal process shall apply to all business licenses granted or denied by Nibley City.

1. Written Appeal: Aggrieved applicants may appeal the decision of the business license official within ten (10) days of receipt or delivery of said decision. Appeals shall be filed by a written statement submitted to the city recorder or designee detailing the grounds upon which the aggrieved applicant is appealing the business license official's decision. Upon receipt of such an appeal, it shall be scheduled for a hearing before the designated hearing officer within twenty (20) days, unless such time is extended for good cause.

2.. Hearing Required: The Administrative Appeal Officer shall afford the appellant an opportunity, in a hearing, to show cause as to why the license should not be denied or revoked.

1. Notice: The date, time and place of the hearing shall be fixed by the city recorder or designee and personal service of the appellant for the notice thereof shall be attempted. The city recorder or designee must make reasonable steps to ensure the appellant gets actual notice. The notice shall indicate the purpose of the hearing and the action contemplated.

2. Procedure: At the hearing, the appellant shall have the right to appear personally or by counsel, to cross examine witnesses, and to produce evidence and witnesses on their behalf.

3. Burden Of Proof: The appellant has the burden of proof.

4. Standard Of Review: The granting or denial of a business license is an administrative action, and the city's decision shall be valid and upheld so long as it is supported by substantial evidence and it is not illegal. "Substantial evidence," as used herein, shall mean evidence that a reasonable mind would accept as adequate to support a conclusion.

5. Final Decision On Appeal And Notice Of Action Taken: After such hearing, the Administrative Appeal Officer will have seven (7) business days, unless extended for good cause, to issue written "findings, conclusions and recommendation" to the city council, which will also be provided to the appellant.

HISTORY

Adopted by Ord. 1977 Code Code § 9-120 on 1/1/1977

5.04 Liquor Control

5.04.010 State Statute Adopted

5.04.020 Application For License And Renewal License

5.04.030 Fees

5.04.040 Referral To Law Enforcement Agency

5.04.050 Bond Required

5.04.060 Department Of Health Permit

5.04.070 Alcoholic Training And Education

5.04.080 Classifications Of Licenses

5.04.090 Purchase Of Alcoholic Beverages For Resale

5.04.100 Separate License For Each Place Of Business; Display

5.04.110 License Are Not Transferable

5.04.120 Restrictions

5.04.130 Inspection Of Premises

5.04.140 Disqualification For Conviction Of Crime

5.04.150 Revocation Or Suspension

5.04.160 Penalty

5.04.010 State Statute Adopted

Unless the application thereof is clearly impractical or inappropriate, in view of the context of purposes or penalty as provided, all of the definitions, requirements, regulations,

prohibitions, provisions and sections of the Utah alcoholic beverage control act (Utah Code 32A), as amended, are hereby adopted by the city. Any and all violations thereof shall be considered violations of this chapter and each such violation shall subject the violator thereof to penalty provisions under this chapter.

HISTORY

Adopted by Ord. 2002 Code on 1/1/2002

5.04.020 Application For License And Renewal License

1. Verified: All applications for alcoholic beverage licenses authorized by this chapter shall be verified and shall be filed with the city recorder. The application must state the applicant's name in full, that they understand and has read and complied with the requirements, and that they possess the qualifications specified in the alcoholic beverage control act and this chapter. If the applicant is a co-partnership, the names and addresses of all partners, and if a corporation, the names and addresses of all officers and directors, must be stated.
2. Subscribed: The application must be subscribed by the applicant who shall state under oath that the facts therein contained are true.
3. Renewal: All applications for renewal licenses filed by the holders of existing licenses shall be filed with the city recorder at least thirty (30) days prior to the expiration date of the then issued license. Any person who fails to file such application within the time limit shall close their licensed premises on the expiration date of the then issued license and shall keep the premises closed for any and all business for the sale of alcoholic beverages until the date of their new license is issued by the city council.

HISTORY

Adopted by Ord. 2002 Code on 1/1/2002

5.04.030 Fees

1. Annual Regulatory License Fee: In addition to any other business license fee which any person or place of business may be required to pay, there is hereby imposed on the business location of every person engaged in the sale or dispensing of alcoholic beverages an annual regulatory license fee. The amount of the annual regulatory fee will be listed on the Consolidated Fee Schedule approved by city council, , according to the license classification.
2. License Fee To Accompany Application: Applications provided for in this chapter shall be accompanied by the fees provided in this section. The fee shall be returned to the applicant if the application is denied.

HISTORY

Adopted by Ord. 2002 Code on 1/1/2002

5.04.040 Referral To Law Enforcement Agency

All applications filed in accordance with the provisions of this chapter shall be referred to the law enforcement agency for inspection and report. The law enforcement agency shall, when possible, within seven (7) days after receiving such application make a report to the city council of: 1) the general reputation and character of the persons who habitually frequent such place; 2) the nature and kind of business conducted at such place by the applicant, by any other person, or by the applicant at any other place; 3) whether the place is or has been conducted in a lawful, quiet and orderly manner; 4) the nature and kind of entertainment, if any, at such place; 5) whether gambling is or has been permitted on the premises or by the applicant at any other place; and 6) the proximity of such premises to any school, church, park or library. The law enforcement agency shall also add to such report its recommendation as to whether or not the application should be granted.

HISTORY

Adopted by Ord. 2002 Code on 1/1/2002

5.04.050 Bond Required

1. Compliance Bond: No regulatory license required by this chapter shall be granted by the city council until the applicant shall have filed a compliance bond with the city treasurer in an amount to be determined by the city council and established by resolution. The bond shall be made payable to the city, conditioned upon the licensee's faithful compliance with the alcoholic beverage control act and the ordinances of the city.
2. Failure To Maintain Valid Bond: If the licensee fails to maintain a valid bond, payable to the city, the alcoholic beverage license shall be immediately suspended until such time as a valid bond is obtained. Failure to obtain a bond within thirty (30) days of notification by the city of the delinquency shall result in the automatic revocation of the city alcoholic beverage license.
3. Withdrawal Of Bond Restricted: No part of the bond may be withdrawn until the alcoholic beverage license has been in effect for a period of at least five (5) years, after which time the city may elect to waive continuance of the bond, if it is determined that the licensee has demonstrated faithful compliance with the laws of the state and the ordinances of the city. Persons who have been granted and maintained a city beer license for at least three (3) years prior to the passage of the ordinance codified in this chapter, and who have subsequently demonstrated faithful compliance with the laws of the state and city ordinances, shall be exempted from the bond requirement unless the license has been allowed to expire.

HISTORY

Adopted by Ord. 2002 Code on 1/1/2002

5.04.060 Department Of Health Permit

No license under this chapter shall be issued until the applicant shall have first procured from the applicable health department a permit which shall show that the premises to be licensed are in a sanitary condition and that the equipment used in the storage, distribution

or sale of alcoholic beverages complies with all the health regulations of the city and the state.

HISTORY

Adopted by Ord. 2002 Code on 1/1/2002

5.04.070 Alcoholic Training And Education

1. Required: No person shall be granted a license to operate or maintain a trade, profession or calling, the transaction or carrying on of which requires a license, within the city if such person operates an establishment which, as part of its business, serves alcoholic beverages, as defined in Utah Code § 32A-1-105(2), to the public for consumption on the premises, unless that person shall show by certificate granted by the Utah department of alcoholic beverage control, or by adequate proof of the existence of such certificate, that each employee of the business engaging in the serving, selling or furnishing of such alcohol on the premises has completed the alcoholic training and education seminar, as required in Utah Code § 62A-8-403.
2. New Employees: Every new employee hired after the licensee has been licensed in compliance with subsection A of this section, who is required to complete this seminar, shall complete the seminar within six (6) months of commencing employment. Violation of this section will result in revocation of the license granted, unless compliance is completed within two (2) months of the time that licensee first became aware that such violation occurred.

HISTORY

Adopted by Ord. 2002 Code on 1/1/2002

5.04.080 Classifications Of Licenses

Retail alcoholic beverage licenses shall be of the following kinds, shall carry the following privileges, and shall be known as: class A beer, class B beer, class C beer and liquor consumption, and temporary beer.

1. Class A Beer License: Class A beer retail licenses shall entitle the licensee to sell beer on the premises, in original sealed containers no larger than two (2) liters, for consumption off the premises, in accordance with the ordinances of the city, provided beer is not sold by minors except under the supervision of a person twenty one (21) years of age or older who is on the premises.
2. Class B Beer License: Class B beer retail licenses shall entitle the licensee to sell beer in the original containers, and on draft, in containers no larger than two (2) liters, for on-premises consumption; beer in sealed containers no larger than two (2) liters may be sold for consumption off-premises in accordance with the alcoholic beverage control act, and the ordinances of the city.
3. Class C Beer And Liquor Consumption License: Class C beer and liquor consumption licenses shall entitle restaurant and private club licensees to sell liquor and beer for consumption on the premises, and to sell beer in sealed containers no larger than

two (2) liters, for off-premises consumption, as specifically defined in, and in accordance with the alcoholic beverage control act.

4. Temporary Beer License: Temporary beer licenses, for sale or dispensing of beer, may be issued for a period of time not to exceed thirty (30) days, and in accordance with the ordinances of the city. **The process obtaining approval for a temporary beer license includes applying for and receiving approval for a Temporary Business License, which standards include a background check, and proof of authorization to do business within the State of Utah. Before the event, applicant must apply for a State Temporary Beer Permit and meet the qualifications required by the Utah Department of Alcoholic Beverage Services. A fee is required with application to the City, and a deposit is required before the event, as listed on the current approved Consolidated Fee Schedule.**

HISTORY

Adopted by Ord. 2002 Code on 1/1/2002

5.04.090 Purchase Of Alcoholic Beverages For Resale

It is a class B misdemeanor and subject to penalty as provided in NCC 1.08.010 for any licensee to purchase or acquire, or to have or possess for the purpose of sale or distribution, any alcoholic beverage except that which they shall have lawfully purchased, as defined in the alcoholic beverage control act.

HISTORY

Adopted by Ord. 2002 Code on 1/1/2002

5.04.100 Separate License For Each Place Of Business; Display

A separate license shall be required for each place of sale and the license shall at all times be conspicuously displayed in the place to which it shall refer or for which it shall be issued. All licensees shall comply with the alcoholic beverage control act and the regulations of the alcoholic beverage control commission.

HISTORY

Adopted by Ord. 2002 Code on 1/1/2002

5.04.110 License Are Not Transferable

Licenses issued pursuant to this chapter shall not be transferrable, and if revoked by the city council, the fee paid by the licensee to the city for the license shall be forfeited to the city.

HISTORY

Adopted by Ord. 2002 Code on 1/1/2002

5.04.120 Restrictions

1. Location Of Business; Exception; Variance:
 1. No class B, class C, or temporary alcoholic beverage license shall be granted to a business located within one thousand five hundred feet (1,500') of any public or private school, church, public library, public playground or park,

measured from the nearest entrance of the outlet by following the shortest route of either ordinary pedestrian traffic or, where applicable, vehicular travel along public thoroughfares, whichever is the closer, to the property boundary of the public or private school, church, public library, public playground, school playground or park; and within six hundred feet (600') if measured in a straight line from the nearest entrance of the proposed outlet to the nearest property boundary of the public or private school, church, public library, public playground, school playground, or park.

2. No class A alcoholic beverage licenses, for sale of beer for off-premises consumption, shall be granted to any business located within six hundred feet (600') of any public or private school or church, measured from the nearest entrance of the outlet by following the shortest route of either ordinary pedestrian traffic or, where applicable, vehicular travel along public thoroughfares, whichever is the closer, to the property boundary of the public or private school or church; and within two hundred feet (200') if measured in a straight line from the nearest entrance of the proposed outlet to the nearest property boundary of the public or private school or church.
3. If compliance with distance requirements would result in peculiar and exceptional practical difficulties, or exceptional and undue hardships, a variance may be required of the city council. Following a public hearing, a variance may or may not be granted by the city council. Should the city grant a variance for a class B or C license, final authority regarding state licensure would require approval of the variance by the alcoholic beverage control commission.
2. Conduct Of Employees And Entertainers: Lewd attire and/or sexually oriented conduct of employees and entertainers, as explicitly defined in Utah Code § 32A-10-206(10 and 13), are prohibited. Furthermore, entertainers are prohibited in this city from performing unclothed, or in attire, costume or clothing that exposes to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.
3. Giving, Selling And Providing Alcoholic Beverages To Specific Persons: It is unlawful for any person to give, sell, or otherwise provide alcoholic beverages for consumption to:
 1. Any person under the age of twenty one (21) years;
 2. Any person who is apparently under the influence of intoxicating alcoholic beverages or products or drugs;
 3. Any person whom the person furnishing the alcoholic beverage knew or should have known from the circumstances was under the influence of intoxicating alcoholic beverages or products or drugs; or
 4. Any person who is a known interdicted person.
4. Business Or Premises Where Gasoline Sold: Only a class A beer license may be granted to any person to sell beer at any business or premises where gasoline for use in motor vehicles is sold.

5. Hours Of Alcoholic Beverage Sales: It shall be unlawful to sell or otherwise furnish or dispose of an alcoholic beverage, whether or not the premises are open to the public, during the following days and hours, according to license classification:
 1. Class A Beer License: Beer may not be sold between the hours of one minute after two o'clock (2:01) A.M. and eight o'clock (8:00) A.M.
 2. Class B Beer License: Beer may not be sold between the hours of one minute after twelve o'clock (12:01) A.M. and ten o'clock (10:00) A.M.
 3. Class C Beer And Liquor Consumption License:
 1. Restaurants: Liquor may not be sold or offered for sale on the day of any election until after the polls close, including regular general, regular primary, special statewide, municipal, special district or school elections; or on any other day between the hours of twelve o'clock (12:00) midnight and twelve o'clock (12:00) noon. Beer may not be sold between the hours of one o'clock (1:00) A.M. and ten o'clock (10:00) A.M.; and
 2. Private Clubs: Liquor may not be sold or offered for sale on the day of any election until after the polls close, including regular general, regular primary, special statewide, municipal, special district or school elections; or on Sundays and any state or federal legal holiday after twelve o'clock (12:00) midnight and before twelve o'clock (12:00) noon, or on any other day between the hours of one o'clock (1:00) A.M. and ten o'clock (10:00) A.M. Beer may not be sold between the hours of one o'clock (1:00) A.M. and ten o'clock (10:00) A.M.
6. On-Premises Consumption After Hours: On-premises consumption of alcoholic beverages may continue for one hour past the time sales cease. Anyone having a class B beer or class C beer and liquor consumption license, or their agents or employees, shall close the establishment and remove or cause to be removed from the premises all patrons, customers, or individuals not employed on the premises no later than two o'clock (2:00) A.M.
7. Unlawful For Patrons To Remain On Premises After Closing: It shall be unlawful for any class B or class C licensee, or for their agents or employees, to permit any patron, customer, or individual not employed on the premises to remain on such premises after the closing time of two o'clock (2:00) A.M.
8. Illumination Of Premises: Licensed premises shall be kept brightly illuminated at all times while occupied or open for business; no booth, or other type of stall, shall be maintained unless all tables, chairs, and occupants are kept open to full view from the main floor and the entrance of such licensed premises.
9. Advertising: It shall be unlawful to advertise the sale of alcoholic beverages, except as defined in the alcoholic beverage control act.
10. Number Of Alcoholic Beverage Licenses: The total number of businesses licensed to sell alcoholic beverages in the city shall not exceed:
 1. An unlimited number of class A beer licenses.
 2. Two (2) class B beer licenses.
 3. Two (2) class C beer and liquor consumption licenses.

HISTORY

Adopted by Ord. 2002 Code on 1/1/2002

5.04.130 Inspection Of Premises

1. Premises Subject To Inspection: All licensed premises shall be subject to inspection by any officer, agent, or peace officer of the city or the alcoholic beverage control commission, or the state board of health, and every licensee shall, at the request of the board of health furnish to it samples of alcoholic beverages which they shall have for sale.
2. Revocation Of License For Violation: Any license granted pursuant to this chapter may be revoked on a finding by the city council that the licensee has had ten (10) days' or more notice from the board of health that the licensee is violating one or more health ordinances, rules or regulations of the city or of the Utah division of health and has failed to comply with such health ordinance, rules or regulations.
3. Closing Of Business: The city council may direct the law enforcement agency to close down any business licensed under this chapter where the board of health has determined that continued operation of the business presents an imminent danger to the health of the community or persons who may eat or drink at the business.

HISTORY

Adopted by Ord. 2002 Code on 1/1/2002

5.04.140 Disqualification For Conviction Of Crime

No license shall be granted to any retailer to sell alcoholic beverages within the city if the licensee, a partner, manager, officer, director, managing agent or shareholder with more than twenty percent (20%) stock has been convicted of:

1. A felony under any federal or state law;
2. Any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration or transportation of alcoholic beverages; or
3. Any crime involving moral turpitude;
4. Nor shall any license to sell alcoholic beverages be granted to anyone who has violated any provision of the ordinances of the city relating to intoxicating liquors; nor to any individual less than twenty one (21) years of age.

HISTORY

Adopted by Ord. 2002 Code on 1/1/2002

5.04.150 Revocation Or Suspension

1. Violations Related To Operation Of Business: The city council may, after a hearing, revoke or suspend any alcoholic beverage license on a finding by it that the licensee or their officers, agents or employees have violated any provision of this chapter or

any ordinance of the city, whether now or hereafter enacted, which in any way related to the operation of the business or the safety of the public.

2. Hearing: A hearing before the city council may be requested by any person:
 1. That is denied or refused an alcoholic beverage license by any officer, agent or employee of the city.
 2. Whose alcoholic beverage license is revoked, restricted, qualified, or limited from that for which it was first issued.

Request For Hearing: The request for hearing must be made in writing to the city recorder and made within thirty (30) days following the date notice denying, refusing, revoking, qualifying, restricting or revoking the alcoholic beverage license is mailed by the city to the applicant or license holder at their address as it appears on the application or license. This Request for Hearing is considered a Business License Appeal Request Application, and must be accompanied by payment as currently listed on the Consolidated Fee Schedule.

- 3.
4. Notification Of Hearing: Following receipt of a request for hearing, the city recorder shall inform the person requesting a hearing of the time and place the hearing is to be held. At the hearing, the aggrieved party shall have the right to hear and examine any witnesses the city may produce to support its decision and to present their own evidence in support of their contention. The city council shall, within ten (10) days following the conclusion of the hearing, in writing, inform the person who requested the hearing of the decision of the city council.
5. No More Than One Hearing: This section shall not be construed so as to afford any aggrieved party more than one hearing before the city council nor shall the hearing provided in this chapter apply to any criminal complaint or proceeding.

HISTORY

Adopted by Ord. 2002 Code on 1/1/2002

5.04.160 Penalty

1. Sales Without License: It shall be a class B misdemeanor and, upon conviction thereof, subject to penalty as provided in NCC 1.08.010, for any person to engage in the business of selling alcoholic beverages at retail without first having procured a license from the city.
2. Sales After Revocation Of License: It shall be a class B misdemeanor and, upon conviction thereof, subject to penalty as provided in NCC 1.08.010, for any person to sell alcoholic beverages after the revocation of the license issued pursuant to this chapter.

HISTORY

Adopted by Ord. 2002 Code on 1/1/2002

5.06 Taxes

<u>5.06.010</u>	<u>Sales</u>	<u>And</u>	<u>Use</u>	<u>Tax</u>		
<u>5.06.020</u>	<u>Municipal</u>	<u>Energy</u>	<u>Sales</u>	<u>And</u>	<u>Use</u>	<u>Tax</u>
<u>5.06.030</u>	<u>Municipal</u>	<u>Telecommunications</u>	<u>License</u>	<u>Tax</u>		

5.06.010 Sales And Use Tax

1. Title: This chapter shall be known as the SALES AND USE TAX ORDINANCE OF NIBLEY CITY.
2. Purpose:
 1. Authorization Of Tax: The forty eighth session of the Utah legislature authorized the counties and municipalities of the state to enact sales and use tax ordinances imposing a one percent (1%) tax.
 2. Tax Established: It is the purpose of this chapter to conform the sales and use tax of the city to conform to the requirements of the sales and use tax act, Utah Code 59-12, as currently amended.
3. Tax Imposed:
 1. Imposed:
 1. From and after the effective date hereof, there is levied and there shall be collected and paid a tax upon every retail sale of tangible personal property, services and meals made within the city at the rate of one percent (1%).
 2. An excise tax is hereby imposed on the storage, use or other consumption in the city of tangible personal property from any retailer on or after the operative date hereof at the rate of one percent (1%) of the sales price of the property.
 3. For the purposes of this chapter, all retail sales shall be presumed to have been consummated at the place of business delivered by the retailer or their agent to an out-of-state destination or to a common carrier for delivery to an out-of-state designation. In the event a retailer has no permanent place of business, the place or places at which the retail sales are consummated shall be as determined under the rules and regulations prescribed and adopted by the state tax commission. "Public utilities", as defined by Utah Code 54, shall not be obligated to determine the place or places within any county or municipality where public utilities are rendered, but the place of sale or the sales tax revenue arising from such service allocable to the city shall be as determined by the state tax commission pursuant to an appropriate formula and other rules and regulations to be prescribed and adopted by it.
 2. Adoption Of State Codes; Provisions:

1. Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of the sales and use tax act, all of the provisions of Utah Code 59-12, as amended, insofar as they relate to sales taxes, excepting Utah Code §§ 59-12-101 and 59-12-119 thereof, are hereby adopted and made a part of this chapter as though fully set forth herein.
2. Wherever, and to the extent that in Utah Code 59-12, the state of Utah is named or referred to as the taxing agency, the name of this city shall be substituted therefor. Nothing in subsection C,2 of this section shall be deemed to require substitution of the name of the city for the word "state" when the word is used as part of the title of the state tax commission, or of the constitution of the state of Utah, nor shall the name of the city be substituted for that of the state in any section when the result of that substitution would require action to be taken by or against the state tax commission in performing the functions incident to the administration or operation of this chapter.
3. If an annual license has been issued to a retailer under Utah Code § 59-12-106, an additional license shall not be required by reason of this subsection.
4. There shall be excluded from the purchase price paid or charged by which the tax is measured:
 1. The amount of any sales or use tax imposed by the state upon a retailer or consumer.
 2. The gross receipts from the sale of or the cost of storage, use or other consumption of tangible personal property upon which a sales or use tax has become due by reason of the sales transaction to any other municipality and any county in the state under the sales or use tax ordinance enacted by that county or municipality in accordance with the sales and use tax act.
4. Penalty: Any person violating any of the provisions of this chapter shall be deemed guilty of a class B misdemeanor, and upon conviction thereof, shall be subject to penalty as provided in NCC 1.08.010.

HISTORY

Adopted by Ord. 2002 Code on 1/1/2002

5.06.020 Municipal Energy Sales And Use Tax

1. Purpose: It is the intent of the city to repeal its franchise tax levied on gas and electricity and adopt the municipal energy sales and use tax, pursuant to and in conformance with Utah Code § 10-1-301 et seq., the municipal energy sales and use tax act.
2. Definitions: As used in this section, the following words and terms shall have the meanings ascribed to them in this subsection:

CONSUMER: A person who acquires taxable energy for any use that is subject to the municipal energy sales and use tax.

CONTRACTUAL FRANCHISE FEE:

1. A fee:
 1. Provided for in a franchise agreement; and
 2. That is consideration for the franchise agreement; or
 3. A fee similar to subsection 1 of this definition; or
 4. Any combination of subsections 1 or 2 of this definition.

DELIVERED VALUE:

2. The fair market value of the taxable energy delivered for sale or use in the city and includes:
 1. The value of the energy itself; and
 2. Any transportation, freight, customer demand charges, service charges or other costs typically incurred in providing taxable energy in usable form to each class of customer in the city.
3. Delivered value does not include the amount of a tax paid under Utah Code 59-12 Part 1 or Part 2.

ENERGY SUPPLIER: A person supplying taxable energy, except for persons supplying a minimal amount of taxable energy, if such persons are excluded by rule put into law by the state tax commission.

FRANCHISE AGREEMENT: A franchise or an ordinance, contract or agreement granting a franchise.

FRANCHISE TAX:

4. A franchise tax.
5. A tax similar to a franchise tax; or
6. Any combinations of subsection 1 or 2 of this definition.

PERSON: Includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

SALE: Any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of taxable energy for a consideration. It includes:

7. Installment and credit sales;

8. Any closed transaction constituting a sale;
9. Any transaction under which right to acquire, use or consume taxable energy is granted under a lease or contract and the transfer would be taxable if an outright sale were made.

STORAGE: Any keeping or retention of taxable energy in this city for any purpose, except sales in the regular course of business.

TAXABLE ENERGY: Gas and electricity.

USE:

10. The exercise of any right or power over taxable energy incident to the ownership or the leasing of the taxable energy.
11. Use does not include the sale, display, demonstration, or trial of the taxable energy in the regular course of business and held for resale.
3. Tax Imposed: There is hereby levied, subject to the provisions of this section, a tax on every sale or use of taxable energy made within the city equaling six percent (6%) of the delivered value of the taxable energy to the consumer. This tax shall be known as the municipal energy sales and use tax.
 1. Calculation: The tax shall be calculated on the delivered value of the taxable energy to the consumer.
 2. Additional Tax: The tax shall be in addition to any sales or use tax on taxable energy imposed by the city as authorized by Utah Code 59-12 Part 2, the local sales and use tax act.
4. Exemptions To Tax
 1. No exemptions are granted from the municipal energy sales and use tax, except as expressly provided in Utah Code § 10-1-305(2)(b); notwithstanding an exemption granted under Utah Code § 59-1-104.
 2. The following are exempt from the municipal energy sales and use tax, pursuant to Utah Code § 10-1-305(2)(b):
 1. Sales and use of aviation fuel, motor fuel and special fuels subject to taxation under Utah Code 59-13;
 2. Sales and use of taxable energy that is exempt from taxation under federal law, the United States constitution or the Utah constitution;
 3. Sales and use of taxable energy purchased or stored for resale;
 4. Sales or use of taxable energy to a person, if the primary use of the taxable energy is for use in compounding or producing taxable energy or a fuel subject to taxation under Utah Code 59-13;
 5. Taxable energy brought into the state by a nonresident for the nonresident's own personal use or enjoyment while within the state, except taxable energy purchased for use in the state by a nonresident living or working in the state at the time of purchase;

6. The sale or use of taxable energy for any purpose other than as a fuel or energy; and
 7. The sale of taxable energy for use outside the boundaries of the city.
 3. The sale, storage, use or other consumption of taxable energy is exempt from the municipal energy sales and use tax levied by this section, provided:
 1. The delivered value of the taxable energy has been subject to a municipal energy sales or use tax levied by another municipality within the state authorized by Utah Code 59-12 Part 3; and
 2. The city is paid the difference between the tax paid to the other municipality and the tax that would otherwise be due under this section, if the tax due under this section exceeds the tax paid to the other municipality.
5. Existing Franchise Agreements:
 1. No Alteration: This section shall not alter any existing franchise agreements between the city and energy suppliers.
 2. Credit Against Tax Due: There is a credit against the tax due from any consumer in the amount of a contractual franchise fee paid if:
 1. The energy supplier pays the contractual franchise fee to the city pursuant to a franchise agreement in effect on July 1, 1997;
 2. The contractual franchise fee is passed through by the energy supplier to a consumer as a separately itemized charge; and
 3. The energy supplier has accepted the franchise.
6. Contract With State Tax Commission:
 1. Required; Authority Of Mayor: On or before the effective date hereof, the city shall contract with the state tax commission to perform all functions incident to the administration and collection of the municipal energy sales and use tax, in accordance with this section. This contract may be a supplement to any existing contract with the commission to administer and collect the local sales and use tax, as provided in this code. The mayor, with the approval of the city council and city attorney, is hereby authorized to enter into agreements with the state tax commission that may be necessary to the continued administration and operation of the municipal energy sales and use tax ordinance enacted by this section.
 2. Monthly Payments By Supplier; Conditions: An energy supplier shall pay the municipal energy sales and use tax revenues collected from consumers directly to the city monthly if:
 1. The city is the energy supplier; or
 1. The energy supplier estimates that the municipal energy sales and use tax collected annually from its Utah consumers equals one million dollars (\$1,000,000.00) or more, and
 2. The energy supplier collects the municipal energy sales and use tax.
 3. Deduction Of Franchise Fees: An energy supplier paying the municipal energy sales and use tax directly to the city may deduct any contractual

franchise fees collected by the energy supplier qualifying as a credit and remit the net tax less any amount the energy supplier retains as authorized by Utah Code § 10-1-307(4).

7. State Statutes Incorporated:

1. Specified; Exemptions: Except as herein provided, and except insofar as they are inconsistent with the provisions of Utah Code § 10-1 Part 3, municipal energy sales and use tax act, as well as this section, all of the provisions of Utah Code 59-12 Part 1, as amended, and in force and effect on the effective date hereof, insofar as they relate to sales and use taxes, excepting Utah Code §§ 59-12-101 and 59-12-119 thereof, and excepting for the amount of the sales and use taxes levied therein, are hereby adopted and made a part of this section as if fully set forth herein.
2. Substitution Of Terms: Wherever, and to the extent that in Utah Code 59-12 Part 1, as amended, the state is named or referred to as the "taxing agency", the name of the city shall be substituted, insofar as is necessary for the purposes of that part, as well as Utah Code 10-1 Part 3, as amended. Nothing in this subsection shall be deemed to require substitution of the name of the city for the word "state" when that word is used as part of the title of the state tax commission, or of the constitution of Utah, nor shall the name of the city be substituted for that of the state in any section when the result of such a substitution would require action to be taken by or against the city or any agency thereof, rather than by or against the state tax commission in performing the functions incident to the administration or operation of this section.
3. Amendments: Any amendments made to Utah Code 59-12 Part 1, as amended, which would be applicable to the city for the purposes of carrying out this section are hereby incorporated herein by reference and shall be effective upon the date that they are effective as a Utah statute.
8. Additional License Or Reporting Not Required: No additional license to collect or report the municipal energy sales and use tax levied by this section is required, provided the energy supplier collecting the tax has a license issued under Utah Code § 59-12-106.
9. Effective Date Of Levy: This section is effective June 30, 1997. The municipal energy sales and use tax shall be levied beginning one minute after twelve o'clock (12:01) A.M., July 1, 1997.

HISTORY

Adopted by Ord. 5-97 on 6/5/1997
Amended by Ord. 2002 Code on 1/1/2002

5.06.030 Municipal Telecommunications License Tax

1. Definitions: As used in this section:

COMMISSION: The state tax commission.

CUSTOMER:

1. Subject to subsections 2 and 3 of this definition the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract.
2. For purposes of this section, "customer" means:
 1. The person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract; or
 2. If the end user is not the person described in subsection 2,a of this definition, the end user of telecommunications service.
3. "Customer" does not include a reseller:
 1. Of telecommunications service; or
 2. For mobile telecommunications service, of a serving carrier under an agreement to serve the customer outside the telecommunications provider's licensed service area.

END USER:

4. The person who uses a telecommunications service.
5. For purposes of telecommunications service provided to a person who is not an individual, "end user" means the individual who uses the telecommunications service on behalf of the person who is provided the telecommunications service.

GROSS RECEIPTS ATTRIBUTED TO THE MUNICIPALITY: Those gross receipts from a transaction for telecommunications services that is located within the municipality for the purposes of sales and use taxes under Utah Code 59-12, sales and use tax act and determined in accordance with Utah Code § 59-12-207.

GROSS RECEIPTS FROM TELECOMMUNICATIONS SERVICE: The revenue that a telecommunications provider receives for telecommunications service rendered except for amounts collected or paid as:

6. A tax, fee, or charge:
 1. Imposed by a governmental entity;
 2. Separately identified as a tax, fee, or charge in the transaction with the customer for the telecommunications service; and
 3. Imposed only on a telecommunications provider;
7. Sales and use taxes collected by the telecommunications provider from a customer under Utah Code 59-12, sales and use tax act; or
8. Interest, a fee, or a charge that is charged by a telecommunications provider on a customer for failure to pay for telecommunications service when payment is due.

MOBILE TELECOMMUNICATIONS SERVICE: Is as defined in the mobile telecommunications sourcing act, 4 USC section 124.

MUNICIPALITY: Nibley City.

PLACE OF PRIMARY USE:

9. For telecommunications service other than mobile telecommunications service, means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be:
 1. The residential street address of the customer; or
 2. The primary business street address of the customer; or
10. For mobile telecommunications service, is as defined in the mobile telecommunications sourcing act, 4 USC section 124.

SERVICE ADDRESS: Notwithstanding where a call is billed or paid:

11. If the location described in this subsection 1 is known, the location of the telecommunications equipment:
 1. To which a call is charged; and
 2. From which the call originates or terminates;
12. If the location described in subsection 1 of this definition is not known but the location described in this subsection 2 is known, the location of the origination point of the signal of the telecommunications service first identified by:
 1. The telecommunications system of the telecommunications provider; or
 2. If the system used to transport the signal is not a system of the telecommunications provider, information received by the telecommunications provider from its service provider; or
13. If the locations described in subsection 1 or 2 of this definition are not known, the location of a customer's place of primary use.

TELECOMMUNICATIONS PROVIDER:

14. Subject to subsections 2 and 3 of this definition, a person that:
 1. Owns, controls, operates, or manages a telecommunications service; or
 2. Engages in an activity described in subsection 1,a of this definition for the shared use with or resale to any person of the telecommunications service.
15. A person described in subsection 1 of this definition is a telecommunications provider whether or not the public service commission of Utah regulates:
 1. That person; or

2. The telecommunications service that the person owns, controls, operates, or manages.
16. "Telecommunications provider" does not include an aggregator as defined in Utah Code § 54-8b-2.

TELECOMMUNICATIONS SERVICE:

17. Telephone service, as defined in Utah Code § 59-12-102, other than mobile telecommunications service, that originates and terminates within the boundaries of this state; and
18. Mobile telecommunications service, as defined in Utah Code § 59-12-102:
 1. That originates and terminates within the boundaries of one state; and
 2. Only to the extent permitted by the mobile telecommunications sourcing act, 4 USC section 116 et seq.
2. Levy Of Tax: There is hereby levied a municipal telecommunications license tax on the gross receipts from telecommunications service attributed to this municipality.
3. Rate: The rate of the tax levy shall be four percent (4%) of the telecommunication provider's gross receipts from telecommunications service that are attributed to the municipality subject to the following: If the location of a transaction is determined to be other than this municipality then the rate imposed on the gross receipts for telecommunications service shall be the lower of: a) the rate imposed by the taxing jurisdiction in which the transaction is located or b) the rate for nonmobile telecommunications service shall be the rate imposed by the municipality in which the customer's service address is located; or for mobile telecommunications service, the rate imposed by the municipality of the customer's primary place of use.
4. Rate Limitation And Exemption: This rate of this levy shall not exceed four percent (4%) of the telecommunication provider's gross receipts from telecommunications service attributed to the municipality unless a higher rate is approved by a majority vote of the voters in this municipality that vote in:
 1. A municipal general election;
 2. A regular general election; or
 3. A local special election.
5. Effective Date Of Tax Levy: This tax shall be levied beginning the earlier of July 1, 2004, or the first day of any calendar quarter after a seventy five (75) day period beginning on the date the commission received notice pursuant to Utah Code § 10-1-403 that this municipality has enacted this section.
6. Changes In Rate Or Repeal: This section is subject to the requirements of Utah Code § 10-1-403. If the tax rate is changed or the tax is repealed, then the appropriate notice shall be given as provided in Utah Code § 10-1-403.
7. Interlocal Agreement For Collection Of Tax: On or before the effective date hereof, the municipality shall enter into the uniform interlocal agreement with the commission as described in Utah Code § 10-1-405 for the collection, enforcement, and administration of this municipal telecommunications license tax.

8. Repeal Of Inconsistent Taxes And Fees: Any tax or fee previously enacted by this municipality under authority of Utah Code § 10-1-203 or Utah Code 11-26, local taxation of utilities limitation is hereby repealed. Nothing in this section shall be interpreted to repeal any municipal ordinance or fee which provides that the municipality may recover from a telecommunications provider the management costs of the municipality caused by the activities of the telecommunications provider in the rights of way of the municipality, if the fee is imposed in accordance with Utah Code § 72-7-102 and is not related to the municipality's loss of use of a highway as a result of the activities of the telecommunications provider in a right of way, or increased deterioration of a highway as a result of the activities of the telecommunications provider in a right of way nor does this section limit the municipality's right to charge fees or taxes on persons that are not subject to the municipal telecommunications license tax under this section and locate telecommunications facilities, as defined in Utah Code § 72-7-108, in this municipality.

HISTORY

Amended by Ord. 1977 Code on 1/1/1977
Adopted by Ord. 04-05 on 5/20/2004

5.08 Solicitors, Canvassers, Peddlers, And Itinerant Merchants

5.08.010					Definitions
5.08.020	License				Required
5.08.030	Application	For	License;	Fee	
5.08.040	Investigation	And	Issuance	Of	License
5.08.050					Fees
5.08.060	Licenses	And			Badges
5.08.070	Notice	Of			Revocation
5.08.080	Revocation	After			Hearing
5.08.090					Appeal
5.08.100	Additional				Requirements
5.08.110					Exceptions
5.08.120	Nonresident	Transient			Businesses

5.08.010 Definitions

CANVASSER OR SOLICITOR: Any individual, whether or not a resident of the city, traveling either by foot, motor vehicle or other type of conveyance from place to place, from house to house, or from street to street, taking or attempting to take orders for the sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject of such sale, or whether they are collecting advance payments on such sales; provided, that such definition shall include any person who, for himself, or for another person, firm or corporation, hires, leases, uses or occupies any building, structure, tent, , hotel or motel room, lodging house, apartment, shop

or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery.

PEDDLER: Shall include any person, whether or not a resident of the city, traveling by foot, motor vehicle or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a motor vehicle, , or other vehicle or conveyance; and further provided, that one who solicits orders and as a separate transaction makes deliveries to purchasers as part of a scheme or design to evade the provisions of this chapter shall be deemed a peddler subject to the provisions of this chapter.

TRANSIENT MERCHANT, ITINERANT MERCHANT OR ITINERANT VENDOR: Any person, firm or corporation, whether as owner, agent, cosignee or employee, whether or not a resident of the city, who engages in a temporary business of selling and delivering goods, wares and merchandise within the city, and who in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, public room in any hotel, motel, lodging house, apartment, shop or any street, alley, or other place within the city, for the exhibition and sale of such goods, wares and merchandise, either privately or a public auction. The person, firm or corporation so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant, or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant, or auctioneer.

HISTORY

Adopted by Ord. 1977 Code Code § 9-452 on 1/1/1977

5.08.020 License Required

It shall be unlawful for:

1. Transient Merchant, Itinerant Merchant Or Vendor: A transient merchant, itinerant merchant or itinerant vendor to engage in such business without first obtaining a license therefore in compliance with the provisions of this chapter.
2. Peddler: Any person to engage in the business of peddler without first obtaining a license therefor as provided in this chapter.
3. Solicitor Or Canvasser: Any solicitor or canvasser to engage in such business without first obtaining a license therefor in compliance with the provisions of this chapter.

HISTORY

Adopted by Ord. 1977 Code Code § 9-451 on 1/1/1977
Amended by Ord. 2002 Code on 1/1/2002

5.08.030 Application For License; Fee

Applicants for licenses under this chapter shall file a sworn application in writing signed by the applicant if an individual, by all partners if a partnership, and by the president if a corporation, or by an agent, including a state or regional agent, with the city recorder or designee. Licenses shall be issued for periods of up to six (6) months. The following information must be provided for the temporary business license application:

1. The name of the applicant and if the applicant is an employee or agent of a corporation, the name of the corporation.
2. The address of the applicant and if the applicant is an agent or employee of a corporation, the address of the corporation.
3. A brief description of the nature of the business and the goods to be sold and from whom or where the applicant obtains the goods to be sold.
4. If the applicant is employed by or an agent of another person, the name and permanent address of such other person.
5. The length of time for which the applicant desires to engage in business within the city.
6. The places within the city where the applicant proposes to carry on their business.
7. A list of the other municipalities in which the applicant has engaged in business within the six (6) month period preceding the date of the application.
8. A photograph of the applicant, taken within six (6) months immediately prior to the date of filing the application, which photograph shall be two inches by two inches (2" x 2"), showing the head and shoulders of the applicant in a clear and distinguishing manner.
9. A Criminal History Report furnished by the Utah State Department of Public Safety and a statement as to whether or not the applicant, or any of their employees have been convicted of any crime, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefore.
10. If the applicant desires to sell fresh vegetables, fruits, meats or other foodstuffs, a statement by a reputable physician of the state, dated not more than ten (10) days prior to submission of the application, certifying the applicant to be free of infectious, contagious, or communicable diseases.
11. If the applicant is employed by another person, firm or corporation documents showing that the person, firm or corporation for whom the applicant proposes to do business is authorized to do business within the state.

HISTORY

*Adopted by Ord. 1977 Code Code § 9-453 on 1/1/1977
Amended by Ord. 2002 Code on 1/1/2002*

5.08.040 Investigation And Issuance Of License

1. Review of Past Conduct: On receiving the application, the city recorder or designee shall review the application to determine whether the applicant has had a Nibley

City business license revoked or denied due to the applicant's violation of applicable city rules, regulations, and ordinances related to the license being sought, whether the applicant has been convicted of a felony or any crime that required proving a dishonest act, false statement, or theft of property, whether the applicant has outstanding debts owed to Nibley City, and whether the application conforms to the requirements of this Chapter.

2. Unsatisfactory Result Of Investigation: If, as a result of the investigation, the applicant has outstanding debts owed to Nibley City, has been convicted of a felony or crime that required proving a dishonest act, false statement, or theft, or has demonstrated a pattern of violating city rules, regulations, and ordinances related to the license being sought, the city recorder or designee shall notify the applicant, in writing, that their application has been denied, the basis for such denial, the applicant's right to file a written appeal of the denial, and the deadline to file such appeal.
3. Satisfactory Result Of Investigation: If, as a result of such investigation, the applicant is found to not have been convicted of a felony or crime that required proving a dishonest act, false statement, or theft, does not have a pattern of violating applicable city rules, regulations, and ordinances related to the license being sought, does not have outstanding debts owed to Nibley City, and the application otherwise complies with the requirements of this Chapter, the city recorder or designee shall, upon payment of the prescribed license fee, issue a license. Such license shall contain the signature of the issuing officer and shall show the name, address and photograph of the licensee and the kind of goods or services to be sold, marketed, or offered pursuant to the application, together with an expiration date.

HISTORY

*Adopted by Ord. 1977 Code Code § 9-454 on 1/1/1977
Amended by Ord. 2002 Code on 1/1/2002*

5.08.050 Fees

1. Established: The license fee shall be as established by resolution of the city council.
2. Interstate Commerce: None of the license fees provided for by this chapter shall be applied as to occasion an undue burden upon interstate commerce. In any case, where a license fee is believed by the licensee or applicant for license to place an undue burden upon interstate commerce, they may apply to the mayor for an adjustment of the fee so that it shall not be discriminatory, unreasonable, or unfair to interstate commerce. Such application may be made before, at or within six (6) months after payment of the prescribed license fee.

HISTORY

Adopted by Ord. 1977 Code Code § 9-455 on 1/1/1977

5.08.060 Licenses And Badges

1. Issuance: The city recorder or designee shall issue to each licensee at the time of delivery of their license, a badge which shall contain the words "Licensed Solicitor", "Licensed Transient Merchant", or "Licensed Peddler", as the case may be, for which the application was made and the license issued, and the number of the license, in letters and figures easily discernible from a distance of five feet (5'). Such badge shall, during the time peddlers or solicitors are engaged in the business for which they are licensed, be worn constantly by them on the front of their outer garment in such a way as to be conspicuous.
2. Exhibit License: Any person licensed pursuant to this chapter shall exhibit such license at the request of any citizen of the city.
3. Produce License Upon Request: It shall be the duty of any law enforcement official to require any person seen soliciting, canvassing, or peddling, and who is not known by such officer to be duly licensed, to produce their license and to enforce the provisions of this chapter.
4. Expiration Of License: All licenses issued pursuant to this chapter shall expire on the date specified on the license.

HISTORY

*Adopted by Ord. 1977 Code Code § 9-456 on 1/1/1977
Amended by Ord. 2002 Code on 1/1/2002*

5.08.070 Notice Of Revocation

Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at their last known address or at the address shown on their application. The hearing and notice shall in all other aspects substantially comply with NCC 1.08.030.

HISTORY

Adopted by Ord. 1977 Code Code § 9-456 on 1/1/1977

5.08.080 Revocation After Hearing

Licenses issued pursuant to this chapter may be revoked by the city, after notice and hearing, for any of the following causes:

1. Fraud, misrepresentation, or a false statement contained in the application for the license.
2. Fraud, misrepresentation for false statement made while carrying on their business as solicitor, canvasser, peddler or itinerant merchant.
3. Any violation of this chapter.
4. Conviction of any crime or misdemeanor involving moral turpitude.
5. Conducting the business of a solicitor, canvasser, peddler or itinerant merchant in an unlawful manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

HISTORY

*Adopted by Ord. 1977 Code Code § 9-456 on 1/1/1977
Amended by Ord. 2002 Code on 1/1/2002*

5.08.090 Appeal

Any person aggrieved by the action of the city in the denial of a license issued pursuant to this chapter, may file an appeal. The process for filing an appeal is provided in NC 5.02.150. The fees to initiate this process are as listed on the current approved Consolidated Fee Schedule. ~~Such appeal shall be taken by filing with the city council within fourteen (14) days after notice of the action complained of has been mailed to such person's last known address or address on the business application, a written statement setting forth fully the grounds for the appeal. A time and place for the hearing on such appeal and notice of such hearing shall be set and given to the applicant in the same manner as provided in NCC 5.08.070.~~

HISTORY

*Adopted by Ord. 1977 Code Code § 9-456 on 1/1/1977
Amended by Ord. 2002 Code on 1/1/2002*

5.08.100 Additional Requirements

This chapter shall not be construed so as to waive the provisions and requirements of any other ordinance of the city and the requirements and fees required herein shall be in addition to any other requirements and fees of any other ordinance of the city.

HISTORY

Adopted by Ord. 1977 Code Code § 9-457 on 1/1/1977

5.08.110 Exceptions

The provisions of this chapter shall not apply to any individual who is, at the time they are engaged in any activity which would otherwise require licensing by this chapter, engaged in an activity which is authorized by any church or charity which has a permanent structure located within the state, provided such church or charity has had such permanent structure for at least six (6) months prior to the date when the individual engaged in the activity would otherwise require licensing by this chapter.

HISTORY

Adopted by Ord. 1977 Code Code § 9-458 on 1/1/1977

5.08.120 Nonresident Transient Businesses

1. Fee; Term Of License: The fee for the business license shall be as established by resolution of the city council. The license will be valid for thirty (30) days.
2. Requirements:
 1. Applicant Information: The city treasurer and/or city recorder will obtain the legitimate address of the home office of the business involved and telephone number.

2. Confirmation Of Legitimate Business: The city treasurer and/or city recorder will call the better business bureau in the city of the home office and by them determine if the business is legitimate.
3. Issuance Of License: If such determination is made (refer to subsection B,2 of this section), the license may then be issued

5.08.130 Solicitor License Required; Penalty

It shall be an infraction and an equivalent civil penalty, as set forth in NCC 1.08, for any person to transact, engage in or carry on any canvassing, soliciting, peddling, transient or itinerant merchant/vending activities without first receiving the class or type of license required by the city. Civil citations and administrative proceedings shall follow the process set forth in NCC 7.02, except where such process is clearly inapplicable.

4.

HISTORY

Adopted by Ord. 2-92 on 10/22/1992
Amended by Ord. 2002 Code on 1/1/2002

5.10 Construction Contractors

5.10.010	Purpose				
5.10.020	Definitions				
5.10.030	Requirements				
5.10.040	Registration	To	Engage	In	Business
5.10.050	Job	License	For	Each	Contract
5.10.060	Regulations				
5.10.070	Records	Maintained;			Inspection

5.10.010 Purpose

The purpose of this chapter is to establish a system of imposing license fees upon persons engaging in business within the limits of the city as contractors and to ensure that such persons are properly licensed under applicable state regulations and local business regulations. It is the opinion of the city council that this method of determining the amount of fee will result in fair taxation and will not discriminate against the contractor who performs only a few jobs within the city limits as distinguished from the contractor who performs many.

HISTORY

Adopted by Ord. 1977 Code Code § 9-431 on 1/1/1977

5.10.020 Definitions

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

CONTRACTOR: Any person, firm, copartnership, corporation, association or other organization, or any combination thereof, who for a fixed sum, price, fee, percentage or other compensation other than wages paid pursuant to an employer-employee relationship, undertakes any building, highway, road, railroad, excavation or other structure, project, development, or improvement, other than movable property,, or any part thereof; provided, that the term "contractor", as used in this chapter, shall include anyone who builds more than one structure on their own property during any one year for the purpose of sale and shall include subcontractors, but shall not include anyone who merely furnishes materials or supplies without fabricating the same into, or consuming the same in the performance of the work of the "contractors", as herein defined, nor shall it include any person who engages in, manages, or contracts for work solely on the person's private property for the purpose of constructing buildings, stuctures, and improvements for the person's personal use and not for sale or resale.

TYPES OF CONTRACTORS: As an illustrative list of contractors subject to the provisions of this chapter, but not in limitation thereof, the following occupations are subject to this chapter: general contractors, specialty contractors of all kinds, such as, but not limited to, those engaged in the business of installing, repairing or otherwise performing services in connection with: acoustical tile and roof decking; awnings, storm doors and windows; air conditioning, dry heating, sheet metal; boilers, steam fitting; carpentry; cement and concrete; ceramic tile; cabinet and millwork; composition floor, counter tops, tile; carpet; drywall; elevator installation; electrical; excavating and grading; fencing; floor coverings; fire prevention (structural); furnaces and burners; glazing; industrial piping; iron and bronze (ornamental); insulation; landscaping; lathing; lawn sprinklers; masonry; mosaic tile and terazzo; overhead doors; painting and paper hanging; pest control (structural); plastering; plumbing and wet heating; roofing and siding; swimming pool; signs, stone masonry; sewer installation; steel reinforcing and erection; tanks (structural); waterproofing; weatherstripping; welding; wrecking and demolition; wood floor laying and finishing.

HISTORY

*Adopted by Ord. 1977 Code Code § 9-432 on 1/1/1977
Amended by Ord. 2002 Code on 1/1/2002*

5.10.030 Requirements

Any person desiring to engage in business as a contractor within the corporate limits of the city must comply with the two (2) following requirements:

1. State license: Prior to engaging in any subject business activity during any calendar year, the contractor shall have obtained all licenses required by all applicable state agencies. The contractor shall maintain such license at all times they engage in business as a contractor within the city.
2. Business License: Prior to the performance of any services in connection with any specific contract or job, the person shall secure a business license to carry on a business as a contractor from Nibley City, unless such person has a current business

license to carry on a business as a contractor from another municipality within Utah.

HISTORY

*Adopted by Ord. 1977 Code Code § 9-433 on 1/1/1977
Amended by Ord. 2002 Code on 1/1/2002*

5.10.040 Registration To Engage In Business

1. Form; Information Requested: Any person desiring to engage in business as a contractor, who is not otherwise exempt from licensure, shall complete and file in the office of the city recorder a registration form provided to them by the city which shall show:
 1. The name of the contractor.
 2. The address and telephone number of the contractor.
 3. The type of organization, e.g., corporation, partnership or sole proprietor.
 4. If a partnership or a corporation or other artificial person, the name, address and telephone number of the person responsible for the functions of the organization:
 1. Whether or not licensed under the contractor's license law of the state; if so, the license number of the contractor.
 2. Type of business in which registrant seeks to engage, e.g., general contractor or one of the specialty contractors.
 3. Such other information as the city council may by regulation require.
2. Annual Fee: Any person seeking to register for the privilege of doing business as a contractor within the limits of the city for any calendar year, or any part thereof, shall pay an annual registration fee in such amount as established by resolution of the city council.

HISTORY

*Adopted by Ord. 1977 Code Code § 9-434 on 1/1/1977
Amended by Ord. 2002 Code on 1/1/2002*

5.10.060 Regulations

All regulations and ordinances applicable to business licenses set forth in NCC 5.02 shall apply to contractor licenses, unless such regulations conflict with the regulations set forth in this chapter.

HISTORY

Adopted by Ord. 1977 Code Code § 9-438 on 1/1/1977

5.10.070 Records Maintained; Inspection

All persons registered pursuant to this chapter for the privilege of doing business as contractors, and all persons who engage in doing business as contractors, shall maintain records of all services performed by them as contractors within the corporate limits of the city. The records shall disclose the person for whom the services are performed and the

contract price or charge made for the services and such other information as the city council may, by regulation, require. The persons shall maintain such records at their office or principal place of business and shall permit officials or agents of the city to inspect said records for the purpose of determining whether or not said persons have complied with the requirements of this chapter.

HISTORY

Adopted by Ord. 1977 Code Code § 9-437 on 1/1/1977

5.12 Offensive Businesses And Facilities

<u>5.12.010</u>						<u>Defined</u>
<u>5.12.020</u>						<u>Permit Required</u>
<u>5.12.030</u>	<u>Application</u>		<u>For</u>		<u>Permit</u>	
<u>5.12.040</u>	<u>Issuance</u>		<u>Of</u>		<u>Permit</u>	
<u>5.12.050</u>	<u>Control</u>	<u>Of</u>	<u>Animal</u>	<u>And</u>	<u>Fowl</u>	<u>Facilities</u>
<u>5.12.060</u>	<u>Existing</u>	<u>Businesses</u>		<u>And</u>	<u>Facilities</u>	

5.12.010 Defined

"Offensive businesses", within the meaning of this chapter, shall include, but not be limited to, packing houses, dairies, tanneries, canneries, , junk or salvage yards, bone factories, slaughter houses, butcher shops, soap factories, foundries, breweries, distilleries, livery stables, blacksmith shops or any other enterprise or establishment which creates excessive odors, fumes, smoke, gases or noises.

HISTORY

Adopted by Ord. 1979 Code § 10-241B on 1/1/1979

5.12.020 Permit Required

No person shall commence or change the location of an offensive business or establishment in or within one mile of the limits of the city without first filing an application for a permit to do so with the city recorder.

HISTORY

Adopted by Ord. 1979 Code § 10-241A on 1/1/1979

5.12.030 Application For Permit

The application for a permit shall specify the location at which the business or establishment is to be operated and maintained or the new location to which it is to be moved. The application shall describe the type of activity which will be conducted and describe the manner in which the business or establishment shall eliminate, control or modify the emission by the business of the undesirable odors, fumes, noises and other noisome features and the manner in which it shall be screened from public view, if its appearance is offensive.

HISTORY

Adopted by Ord. 1979 Code § 10-241C on 1/1/1979

5.12.040 Issuance Of Permit

1. Report And Recommendation: The city recorder shall cause a study to be made of the proposed business or relocation of any offensive business or establishment by the board of health and by personnel engaged in the inspection of buildings and other facilities. A report and recommendation shall be made to the city council. The city council, after review, may grant to the applicant an opportunity to be heard and present additional facts. Thereafter the city council may:
 1. Deny the application.
 2. Recommend a modification thereof.
 3. Grant a limited permit to enter the business or make the change of location subject to the requirement that the business or facility conform to standards established by the city council with reference to controlling the offensive features of the business.
2. Revocation Of Permit: In the event a permit is granted, it shall be subject to revocation either upon failure of the operator or owner to conduct his business in the manner specified by the city council at the time of the granting of the permit, or because a change of circumstances makes the continued operation or maintenance of the business or facility a public nuisance.
3. Modification Of Permit: The city council shall have power to revoke or modify the permission to operate and maintain the business in such a manner as it deems necessary for the public good.

HISTORY

Adopted by Ord. 1979 Code § 10-242 on 1/1/1979

5.12.050 Control Of Animal And Fowl Facilities

1. Location And Management: The city council shall have the power to prohibit or control the location and management of any offensive, unwholesome business or establishment in or within one mile of the city and may compel the owner of any pigsty, privy, barn, corral, fur-bearing animal farm, feed yard, poultry farm or other unwholesome or nauseous house or place to cleanse, abate or remove the same.
2. Examination Of Operation: The city council may, on its own initiative and shall, on complaint of a member of the public, examine the operation, control or location of any business or facility for the purpose of determining whether the operation of such business or facility should be improved so as to minimize the offensive and unwholesome characteristics or whether the business or activity should be moved or abated.
3. Notification Of Abatement: In the event that the city council decides that the business or facility should be abated, removed or controlled, it shall notify the owner or operator of the business or facility of such fact.
4. Hearing; Limited Permit: After a hearing, the city council may issue a limited permit wherein it may prescribe the specifications and standards which must be followed by the business or facility in order to be permitted to continue in operation.

5. Abatement Or Removal: Upon a determination by the city council that the business or facility is a nuisance, it shall have power to order the abatement or removal of the facility or establishment. If the owner fails to conform to such order, the city council shall have power to bring all necessary legal proceedings to force removal, abatement, or adherence to standards.

HISTORY

*Adopted by Ord. 1979 Code § 10-244 on 1/1/1979
Amended by Ord. 2002 Code on 1/1/2002*

5.12.060 Existing Businesses And Facilities

1. Investigation By City Council: The city council may require an investigation of any existing offensive business or facility to determine whether it should be permitted to remain in existence in or within one mile of the city limits. If the city council determines that the continuation of the business or facility has become a nuisance to persons situated within the city limits or that ample control is not being exercised to minimize the creation of excessive odors, fumes, smokegases, and noise, it shall notify the owner or operator thereof that the city council is considering revoking or modifying the operator's permit.
2. Conform To Standards And Specifications: If the city council decides to require a modification of the manner in which the business or facility is to be maintained, it shall specify the standards or specifications to which the enterprise must conform or otherwise lose its permit to engage thereafter in the business or activity.

HISTORY

*Adopted by Ord. 1979 Code § 10-243 on 1/1/1979
Amended by Ord. 2002 Code on 1/1/2002*

5.14 Sexually Oriented Businesses

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5.14.010 Title For Citation

The provisions codified in this chapter shall be known and may be referred to as the SEXUALLY ORIENTED BUSINESS AND EMPLOYEE LICENSING ORDINANCE.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.020 Purpose Of Provisions

It is the purpose and object of this chapter that the city establishes reasonable and uniform regulations governing the time, place, and manner of operation of sexually oriented businesses and their employees in the city. This chapter shall be construed to protect the governmental interests recognized by this chapter in a manner consistent with constitutional protections provided by the United States and Utah constitutions.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.030 Application Of Provisions

This chapter imposes regulatory standards and license requirements on certain business activities which are characterized as sexually oriented businesses, and certain employees of those businesses characterized as sexually oriented business employees. Except where the context or specific provisions require, this chapter does not supersede or nullify any other related ordinances, including, but not limited to, those codified in NCC 19.38.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.040 Definitions

For purposes of this chapter, the following words and phrases shall have the meanings set forth below unless a different meaning is clearly indicated by the context:

ADULT BOOKSTORE OR ADULT VIDEO STORE: A commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, photographs, films, motion pictures, videocassettes, compact discs, digital video discs, slides or simulated display, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas. For the purpose of this definition, "principal purpose" means the commercial establishment:

1. Has a substantial portion of its displayed merchandise which consists of said items,
or

2. Has a substantial portion of the wholesale value of its displayed merchandise which consists of said items, or
3. Has a substantial portion of the retail value of its displayed merchandise which consists of said items, or
4. Derives a substantial portion of its revenues from the sale or rental, for any form of consideration, of said items, or
5. Maintains a substantial section of its interior business space for the sale or rental of said items, or
6. Regularly features said items, and prohibits access by minors, because of age, to the premises, and advertises itself as offering "adult" or "XXX" or "X-rated" or "erotic" or "sexual" or "sensual" or "pornographic" material on signage visible from a public right of way, or
7. Maintains an "adult arcade", which means any place to which the public is permitted or invited wherein coin operated or slug operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting specified sexual activities or specified anatomical areas.

ADULT CABARET: A nightclub, bar, juice bar, restaurant, bottle club, or other commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear nude and/or seminude.

ADULT MOTEL: A motel, hotel, or similar commercial establishment which:

1. Offers accommodations to the public for any form of consideration; provides customers with closed circuit television transmissions, films, motion pictures, videocassettes, other photographic reproductions, or live performances which are characterized by the display or simulated display of specified sexual activities or specified anatomical areas and which advertises the availability of such material by means of a sign visible from a public right of way, or by means of any on or off premises advertising, including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or
2. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
3. Allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than ten (10) hours.

ADULT MOTION PICTURE THEATER: A commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display or simulated display of specified sexual activities or specified anatomical areas are regularly shown to more than five (5) persons for any form of consideration.

CHARACTERIZED BY: Describing the essential character or quality of an item. As applied in this chapter, no business shall be classified as a sexually oriented business solely by virtue of showing, selling, or renting materials rated "NC-17" or "R" by the Motion Picture Association of America.

CITY: The city of Nibley, Utah.

CITY MANAGER: The Nibley City manager, or the manager's designee.

CUSTOMER: A patron of a business as defined in this chapter.

EMPLOY, EMPLOYEE, AND EMPLOYMENT: Describe and pertain to any person who performs any service on the premises of a business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

ESTABLISH AND ESTABLISHMENT: Any of the following:

1. The opening or commencement of any sexually oriented business as a new business;
2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
3. The addition of any sexually oriented business to any other existing sexually oriented business.

HEARING OFFICER: An attorney with an independent practice and not a full-time employee of Nibley City, licensed to practice law in the state of Utah.

INFLUENTIAL INTEREST: Any of the following:

1. The actual power to operate a sexually oriented business or control the operation, management or policies of a sexually oriented business or legal entity which operates a sexually oriented business,
2. Ownership of a financial interest of twenty percent (20%) or more of a business or of any class of voting securities of a business, or
3. Holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates a sexually oriented business.

LICENSEE: A person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an employee, "licensee" means the person in whose name a sexually oriented business employee license has been issued.

MUNICIPAL COUNCIL: The municipal council of the city of Nibley, Utah.

NUDITY OR A STATE OF NUDITY: The showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

OPERATE OR CAUSE TO OPERATE: To cause to function or to put or keep in a state of doing business.

OPERATOR: Any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may operate or cause to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

PERSON: An individual, proprietorship, partnership, corporation, association, or other legal entity.

PREMISES: The real property upon which a sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in an application for a business license pursuant to NCC 5.14.060.

REGULARLY: The consistent and repeated doing of the act so described.

SEMINUDE MODEL STUDIO: A place where persons regularly appear in a state of semi nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi nudity do so in a modeling class operated:

1. By a college, junior college, or university supported entirely or partly by taxation;
2. By a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation; or
3. In a structure:
 1. Which has no sign visible from the exterior of the structure and no other advertising that indicates a seminude person is available for viewing; and
 2. Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class.

SEMINUDE OR STATE OF SEMINUDITY: The showing or the simulated showing of a female breast with less than a fully opaque covering below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition includes the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a dress, blouse, shirt, leotard, or similar wearing apparel, provided the areola is not exposed in whole or in part.

SEXUAL DEVICE: Any three-dimensional object designed or marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, instruments that enhance sexual activity, and physical representations of the human genital organs. Nothing in this definition shall be construed to include any device primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

SEXUAL DEVICE SHOP: A commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drugstore, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

SEXUAL ENCOUNTER CENTER: A business or commercial enterprise that, as one of its principal business purposes, purports to offer, for any form of consideration, physical contact in the form of wrestling or tumbling when one or more of the persons is seminude.

SEXUALLY ORIENTED BUSINESS: An adult bookstore or adult video store, an adult cabaret, an adult motel, an adult motion picture theater, a seminude model studio, sexual device shop, or a sexual encounter center.

SIMULATED SHOWING OR SIMULATED DISPLAY: The utilization of a device or covering, exposed to view, that realistically appears to be any part of a specified anatomical area.

SPECIFIED ANATOMICAL AREA: Means and includes:

1. Less than completely and opaquely covered human genitals, pubic region, anus, anal cleft, buttock and female breast below a point immediately above the top of the areola; and
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED CRIMINAL ACTIVITY:

1. Any of the following specified crimes for which less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:
 1. Dissemination or distribution of obscenity or pornographic material;
 2. Distribution of a controlled substance;
 3. Engaging in organized criminal activity relating to a sexually oriented business;
 4. Indecency with a child, including:
 1. Unlawful sexual activity with a minor,
 2. Sexual abuse of a minor, and
 3. Lewdness involving a child;
 5. Indecent exposure or lewdness;
 6. Molestation of a child, including:
 1. Rape of a child,
 2. Object rape of a child,
 3. Sodomy on a child,
 4. Sexual abuse of a child, and
 5. Aggravated sexual abuse of a child;
 7. Sexual exploitation of a minor;
 8. Prostitution or promotion of prostitution, including:
 1. Patronizing a prostitute,
 2. Aiding prostitution,
 3. Exploiting prostitution, and
 4. Aggravated exploitation of prostitution;
 9. Rape, including:
 1. Object rape,
 2. Forcible sodomy, and
 3. Forcible sexual abuse;
 10. Sale, distribution or display of harmful material to a minor, including:
 1. Indecent public displays, and
 2. Dealing in harmful material to a minor;
 11. Sexual assault or aggravated sexual assault;
 12. Sexual performance by a child;
 13. Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses, or
 14. Any offense in another jurisdiction that, had the predicate act(s) been committed in Utah, would constitute any of the foregoing offenses; or
 15. Incest.
2. Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses.

SPECIFIED SEXUAL ACTIVITY: Any of the following:

1. Actual or simulated intercourse, oral copulation, masturbation or sodomy; or

2. Actual or simulated excretory functions as a part of or in connection with any of the activities described in subsection A of this definition.

SUBSTANTIAL: At least thirty five percent (35%) of the item(s) or word(s) so modified.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS: Any of the following:

1. The sale, lease, or sublease of the business;
2. The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
3. The establishment of a trust, gift, or other similar legal device which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

VIEWING ROOM: The room, booth, or area where a customer of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.050 Classification

The classifications for sexually oriented businesses shall be as follows:

1. Adult bookstore or adult video store;
2. Adult cabaret;
3. Adult motel;
4. Adult motion picture theater;
5. Seminude model studio;
6. Sexual device shop; or
7. Sexual encounter center.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.060 License Required

1. It shall be unlawful for any person to operate a sexually oriented business in Nibley City without a valid sexually oriented business license.
2. It shall be unlawful for any person to be an employee, as defined in this chapter, of a sexually oriented business in Nibley City without a valid sexually oriented business employee license.
3. An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the Nibley City business license office a

complete application made on a form provided by the city manager. The application shall be signed as required by subsection E of this section and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in subsections C,1 through C,7 of this section, accompanied by the appropriate fee identified in NCC 5.14.080:

1. The applicant's full true name and any other names used by the applicant in the preceding five (5) years;
 2. Current business address or another mailing address of the applicant;
 3. Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a government agency;
 4. If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business;
 5. If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process;
 6. A background check conducted by a qualified law enforcement agency stating whether an applicant has been convicted of or has pled guilty or nolo contendere to a "specified criminal activity" as defined in NCC 5.14.040, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable; and
 7. A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to a court order of closure or padlocking.
 8. The information provided pursuant to subsections C,1 through C,7 of this section shall be supplemented in writing by certified mail, return receipt requested, to the city manager within ten (10) working days of a change of circumstances which renders the information originally submitted false or incomplete.
4. An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (.6"). Applicants who are required to comply with NCC 5.14.160 shall

submit a diagram indicating that the interior configuration meets the requirements of said section.

5. If a person who wishes to operate a sexually oriented business is an individual, the person shall sign the application for a license as the applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as the applicant. Each applicant shall be qualified under NCC 5.14.070 and each applicant shall be considered a licensee if a license is granted.
6. The information provided by an applicant in connection with an application for a license under this chapter shall be maintained by the office of the city manager on a confidential basis, and such information may be disclosed only as may be required by law or court order, and only to the extent required by law or court order.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.070 Issuance Of License

1. Upon the filing of a complete application under NCC 5.14.060 for a sexually oriented business license, the city manager shall immediately issue a temporary license to the applicant, which temporary license shall expire upon a final decision of the city to deny or grant a business license. Within twenty (20) days of the filing date of a complete sexually oriented business license application, the city manager shall issue a business license to the applicant or issue to the applicant a letter of intent to deny the application. The city manager shall issue a license unless:
 1. An applicant is less than eighteen (18) years of age;
 2. An applicant has failed to provide information required by NCC 5.14.060 for issuance of a license or has falsely answered a question or request for information on the application form;
 3. The license application fee required by NCC 5.14.080 has not been paid;
 4. The sexually oriented business does not comply with the interior configuration requirements of this chapter or does not comply with locational requirements set forth in NCC 19.38;
 5. Any sexually oriented business in which the applicant has had an influential interest has in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to an order of closure or padlocking; or
 6. An applicant has been convicted of or pled guilty or nolo contendere to a "specified criminal activity" as defined in this chapter.
2. Upon the filing of a complete application under NCC 5.14.060 for a sexually oriented business employee license, the city manager shall immediately issue a temporary

license to the applicant, which temporary license shall expire upon the final decision of the city to deny or grant a business license. Within twenty (20) days of the filing date of a complete sexually oriented business employee license application, the city manager shall either issue a business license or issue a written notice of intent to deny a license to the applicant. The city manager shall approve the issuance of a license unless:

1. The applicant is less than eighteen (18) years of age;
 2. The applicant has failed to provide information as required by NCC 5.14.060 for issuance of a license or has falsely answered a question or request for information on the application form;
 3. The license application fee required by NCC 5.14.080 has not been paid;
 4. Any sexually oriented business in which the applicant has had an influential interest has in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to an order of closure or padlocking; or
 5. The applicant has been convicted of or pled guilty or nolo contendere to a "specified criminal activity" as defined in this chapter.
3. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time. A sexually oriented business employee shall have possession of the employee's license on his or her person or keep the license on the premises where the licensee is then working or performing.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.080 Fees

The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as shown on the consolidated fee schedule adopted by the municipal council.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.090 Inspection

1. A sexually oriented business and any sexually oriented business employee shall permit the city manager and the manager's agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where customers are permitted, for the purpose of ensuring compliance with applicable

requirements of this chapter, during those times when the sexually oriented business is occupied by customers or is open to the public. This section shall be narrowly construed by the city to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections.

2. The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.100 Expiration Of License

1. Except for a temporary license or as otherwise provided in this section, the term of a license shall be as provided in this code, unless suspended or revoked.
2. A license may be renewed only by submitting an application as provided in NCC 5.14.060 and paying the fee required by NCC 5.14.080.
3. Application for renewal of a license shall be made at least ninety (90) days before the expiration date pursuant to the procedures set forth in NCC 5.14.070. When made less than ninety (90) days before the expiration date, the expiration of the license shall not be affected.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.110 Suspension

1. If a sexually oriented business licensee knowingly violates or knowingly allows an employee to violate the provisions of this chapter, the city manager shall issue a letter to the licensee indicating the city's intent to suspend the licensee's sexually oriented business license for a period of up to thirty (30) days.
2. If an employee knowingly violates the provisions of this chapter, the city manager shall issue a letter to the employee indicating the city's intent to suspend the employee's sexually oriented business employee license for a period of up to thirty (30) days.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.120 Revocation

1. The city manager shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly violates a provision of this chapter or has knowingly allowed

an employee to violate a provision of this chapter and the licensee's license has been suspended within the previous twelve (12) month period.

2. The city manager shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:
 1. The licensee has knowingly given false information in the application for the sexually oriented business license;
 2. The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances or alcoholic beverages on the premises;
 3. The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises; or
 4. The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the licensed premises.
3. The fact that any relevant conviction is being appealed shall have no effect on the revocation of a license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, such conviction shall be treated as null and of no effect for revocation purposes.
4. When, after the notice and hearing procedure described in NCC 5.14.130, a license is revoked, such revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one year from the date revocation becomes effective.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.130 Hearing; Denial, Revocation, And Suspension; Appeal

1. When the city manager issues a written notice of intent to deny, suspend, or revoke a license, the city manager shall immediately send such notice, which shall include the specific grounds under this chapter for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Nibley City business license office for the respondent. The notice shall specify a date, not less than ten (10) days nor more than twenty (20) days after the date the notice is issued, on which a hearing officer shall conduct a hearing on the city manager's intent to deny, suspend, or revoke the license.
 1. At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on the respondent's behalf, and cross examine any of the city manager's witnesses. The city manager shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) consecutive days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The hearing officer shall issue a written decision, including specific reasons for

the decision pursuant to this chapter, to the respondent within five (5) days after concluding the hearing.

2. If a decision is to deny, suspend, or revoke a license, the decision shall not become effective until the thirty (30) days after the decision is rendered. The decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction.
 1. If the hearing officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the hearing officer shall, contemporaneously with the issuance of the decision, order the city manager to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action.
 2. If the respondent is not yet licensed, the city manager shall contemporaneously therewith issue the license to the applicant.
2. If any court action challenging the city manager's or hearing officer's decision is initiated, the city attorney shall prepare and transmit to the court a transcript of the hearing within ten (10) days after receiving written notice of the filing of the court action. The city shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings.
3. The following shall apply to any sexually oriented business that is in operation as of the effective date of this chapter:
 1. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city's enforcement of the denial, suspension, or revocation, the city shall immediately issue the respondent a provisional license.
 2. The provisional license shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and shall expire upon the court's entry of judgment on the respondent's appeal or other action to restrain or otherwise enjoin the city's enforcement.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.140 Transfer Of License

A licensee shall not transfer the licensee's sexually oriented business license to another person, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated on the license.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.150 Hours Of Operation

No sexually oriented business shall be or remain open for business between twelve o'clock (12:00) midnight and six o'clock (6:00) A.M. on any day.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.160 Exhibition Of Sexually Explicit Films Or Videos

1. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than three hundred fifty (350) square feet of floor space, a film, videocassette, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements:
 1. Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of each restroom, operator station, viewing room, overhead lighting fixture, video camera and monitor installed for monitoring purposes and shall designate those portions of the premises where customers will not be permitted.
 1. Restrooms shall not contain video reproduction equipment.
 2. The diagram shall also designate the place where the license will be conspicuously posted, if granted.
 3. A professionally prepared diagram in the nature of an architectural drawing shall not be required; however, the top of each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches (6"). The city manager may waive the foregoing diagram for renewal applications if the applicant presents a previously submitted diagram and certifies that the configuration of the premises has not been altered since it was prepared.
 2. It shall be the duty of the operator, and of any employee present on the premises, to ensure no customer is permitted access to any area of the premises which has been designated as an area in which customers will not be permitted in the application filed pursuant to subsection A,1 of this section.
 3. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place where customers are permitted access at an illumination of not less than five (5) foot-candles as measured at the floor level. The operator and any employee present on the premises shall have the duty to ensure the illumination described above is maintained at all times when the premises are occupied by customers or open for business.
 4. The operator and any employee present on the premises shall have the duty to ensure no sexual activity occurs in or on the licensed premises.
 5. The operator shall have the duty to post conspicuous signs in well lighted entry areas of the business stating all of the following:
 1. Occupancy of viewing rooms is limited to one person;
 2. Sexual activity on the premises is prohibited;

3. Making of openings between viewing rooms is prohibited;
 4. Violators will be required to leave the premises; and
 5. Violations of subsections A,5,a, A,5,b and A,5,c of this section are unlawful.
6. The operator shall have the duty to enforce the regulations set forth in subsections A,5,a through A,5,d of this section.
7. The interior of the premises shall be configured to provide an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room, but excluding restrooms, to which any customer is permitted access for any purpose.
 1. An operator's station shall not exceed thirty two (32) square feet of floor area.
 2. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured to provide an unobstructed view of each area of the premises to which any customer is permitted access for any purpose from at least one of the operator stations. The view required in this subsection shall be by direct line of sight from an operator's station.
 3. The operator shall have the duty to ensure at least one employee is on duty and situated in each operator's station at all times when a customer is on the premises, and
 4. The operator and any employees present on the premises shall have the duty to ensure the view area specified in this subsection remains unobstructed by any door, curtain, wall, merchandise, display rack or other material or enclosure at all times when a customer is present on the premises.
2. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.170 Loitering, Exterior Lighting, Visibility, And Monitoring Requirements

1. The operator of a sexually oriented business shall have the duty to:
 1. Post conspicuous signs stating that no loitering is permitted on the premises;
 2. Designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every ninety (90) minutes or inspecting the premises by use of video cameras and monitors; and
 3. Provide lighting of the exterior portion of the premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously whenever the premises are open for business. Such monitors shall be installed within an operator's station.

2. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.
3. No sexually oriented business licensee or other person shall erect a fence, wall, or other barrier which prevents any portion of a parking lot for employees or customers of the business from being visible from a public right of way.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.180 Penalties And Enforcement

1. A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this chapter shall be guilty of a class B misdemeanor. Each day a violation is committed, or permitted to continue, shall constitute a separate offense, and shall be fined as such.
2. The city attorney is hereby authorized to institute civil proceedings necessary for the enforcement of this chapter to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the city.
3. Nothing in this section and no action taken hereunder shall:
 1. Prohibit a criminal or administrative proceeding as may be authorized by other provisions of this chapter, this code, or other law, or
 2. Exempt any person violating this chapter, this code, or other law from a penalty which may be incurred.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.190 Applicability Of Chapter To Existing Businesses

Any existing sexually oriented business and sexually oriented business employee are hereby granted a de facto temporary license to continue operation or employment for a period of ninety (90) days following the effective date of this chapter. By the end of said ninety (90) days each sexually oriented business and sexually oriented business employee shall conform to and abide by the requirements of this chapter.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.200 Prohibited Activities

1. It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations:
 1. It shall be a violation of this chapter for a customer, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

2. It shall be a violation of this chapter for a person to knowingly or intentionally, in a sexually oriented business, appear in a seminude condition unless the person is an employee who, while seminude, remains at least six feet (6') from any customer and on a stage at least eighteen inches (18") from the floor in a room of at least one thousand (1,000) square feet.
 3. It shall be a violation of this chapter for any employee who regularly appears seminude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.
 4. It shall be a violation of this chapter for any person to sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.
2. A sign, in a form prescribed by the city manager, summarizing the provisions of subsections A1, A2, A3, and A4 of this section shall be posted near the entrance of a sexually oriented business in a location where it is clearly visible to customers upon entry.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.210 Scienter Required To Prove Violation Or Business Licensee Liability

This chapter does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this chapter. Notwithstanding anything to the contrary, for the purposes of this chapter, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this chapter, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

5.14.220 Effect Of City Failure To Act

In the event a city official is required to act or do a thing pursuant to this chapter within a prescribed time, and fails to act or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the city official under this chapter and not completed in the time prescribed includes approval of condition(s) necessary for approval by the city of an applicant's or licensee's application for a sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee shall be allowed to commence operations or employment the day after the deadline for the city's action has passed.

HISTORY

Adopted by Ord. 08-07 on 4/17/2008

Agenda Item #18 & 19

Description	Discussion & Consideration: Ordinance 23-14 — Amending NCC 1.08, 7.16, 9.02, 9.06, 19.02.110, and 19.34.110 Regarding Nibley City Animal Code Enforcement and Discussion & Consideration: Ordinance 23-14 — Amending NCC 1.08, 7.16, 9.02, 9.06, 19.02.110, and 19.34.110 Regarding Nibley City Animal Code Enforcement (Second Reading)
Presenter	Justin Maughan, Manager
Recommendation	Hold the public hearing. Move to Continue Ordinance 23-14 — Amending NCC 1.08, 7.16, 9.02, 9.06, 19.02.110, and 19.34.110 Regarding Nibley City Animal Code Enforcement.
Reviewed By	Mayor, City Manager, City Planner, City Attorney, Cache County Sheriff's Office, City Prosecutor (presumed)

Background

Code was updated to be in compliance with State Law, and to make it more enforceable.

Summary of major changes:

1. Changed penalty from a misdemeanor to an infraction, HB202 from 2020 general session of Utah Legislature.
2. Identifies the Administrative Appeal's Officer as the responsible party to hear appeals.
3. Exempts law enforcement animals from Dangerous Animal regulations.
4. Increases and makes clear regulations for animals deemed to be Dangerous.
5. Further defines Loud Animals, and associated regulations about disturbing the peace.

ORDINANCE 23-14

**AMENDING NCC 1.08, 9.02, 9.06, 19.02.110, and 19.34.110
ANIMAL CODE ENFORCEMENT REGULATIONS**

WHEREAS, Nibley City desires Animal Code violations be in compliance with Utah State Law; and

WHEREAS, adopting the appropriate processes will help to ensure that Nibley City's Animal Code regulations within the City are effectively upheld;

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

1. The attached amendments to Nibley City Code 1.08, 9.02, 9.06, 19.02.110, and 19.34.110 are adopted into Nibley City Code.
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 _____, 2023.

Larry Jacobsen, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

1.08.010 Sentencing

- A. **Penalty For Violation Of Ordinance:** Unless otherwise specifically authorized or governed by state statute, the city council may provide a criminal penalty for the violation of any city ordinance by a fine not to exceed the maximum class B misdemeanor fine under Utah Code § 76-3-301, or by a term of imprisonment up to six (6) months, or by both the fine and term of imprisonment. The city council may prescribe a minimum penalty for the violation of any city ordinance and may impose a civil penalty for the violation of any city ordinance by a fine not to exceed the fine amount that would be imposed as a criminal penalty for a violation of the same ordinance. The city council may also regulate and impose a civil penalty for the unauthorized use of city property, including, but not limited to, the use of parks, streets and other public grounds or equipment. Rules of civil procedure shall be substantially followed and due process provided for all criminal or civil enforcement proceedings. Civil citations and administrative proceedings shall follow the process set forth in NCC 7.02, except where such process is clearly inapplicable.
- B. **Term Of Imprisonment For Misdemeanors:** A person who has been convicted of a misdemeanor may be sentenced to imprisonment as follows:
1. In the case of a class B misdemeanor, for a term not exceeding six (6) months;
 2. In the case of a class C misdemeanor, for a term not exceeding ninety (90) days.
- C. **Infractions:**
1. A person convicted of an infraction may not be imprisoned but may be subject to a fine, forfeiture and disqualification, or any combination.
 2. Whenever a person is convicted of an infraction and no punishment is specified, the person may be fined as for a class C misdemeanor.
- D. **Fines Of Persons:** A person convicted of an offense may, in addition to any term of imprisonment imposed, be sentenced to pay a fine not to exceed:
1. Class B Misdemeanor: See current approved Consolidated Fee Schedule.
 2. Class C Misdemeanor; Infraction: See current approved Consolidated Fee Schedule.
- E. **Fines Of Corporations:** The sentence to pay a fine, when imposed upon a corporation, association, partnership or governmental instrumentality for an offense defined in this code, or the ordinances of the city, or for an offense defined outside of this code over which this city has jurisdiction, for which no special corporate fine is specified, shall be to pay an amount fixed by the court, not exceeding:
1. Class B Misdemeanor: See current approved Consolidated Fee Schedule; and

2. Class C Misdemeanor; Infraction: See current approved Consolidated Fee Schedule.

1.08.020 Offensive Designated; Classified

A. Sentencing In Accordance With Chapter:

1. A person adjudged guilty of an offense under this code or the ordinances of this city shall be sentenced in accordance with the provisions of this chapter.
2. Ordinances enacted after the effective date of this code which involve an offense should be classified for sentencing purposes in accordance with this chapter, unless otherwise expressly provided.

B. Designation Of Offenses: Offenses are designated as misdemeanors or infractions.

C. Misdemeanors Classified:

1. Misdemeanors are classified into two (2) categories:
 - a. Class B misdemeanor.
 - b. Class C misdemeanor.
2. Any offense designated as a misdemeanor or any act prohibited or declared to be unlawful in this code or any ordinance of this city when no other specification as to punishment or category is made, is a class B misdemeanor, unless the violation pertains to an individual's pet dog or cat or an individual's use of the individual's residence, in which case the offense shall be designated and prosecuted as an infraction, notwithstanding any provision in this code to the contrary, unless the violation is a nuisance, threatens the health, safety, or welfare of the individual or an identifiable third party, or the city has imposed a fine on the individual for a violation involving the same residence or pet on three previous occasions within the past 12 months.

D. Infractions:

1. Infractions are not classified.
2. Any offense which is made an infraction in this code or other ordinances of this city, or which is expressly designated an infraction and any offense designated by this code or other ordinances of this city which is not designated as a misdemeanor and for which no penalty is specified is an infraction.

E. Continuing Violation: In all instances where the violation of this code or any ordinance hereinafter enacted is a continuing violation, a separate offense shall be deemed committed on each day during or on which the violation occurs or continues to occur, provided that infractions for violations pertaining to an individual's pet dog or cat or an individual's use of the individual's residence shall not be issued more than once within a 14-day time period, each of which periods the violation continues shall be considered separate violations and occurrences.

9.02.010 Definitions

ADMINISTRATIVE APPEAL OFFICER: The individual appointed or designated to hear appeals related to this chapter. In the absence of an appointed officer, the mayor shall be the administrative appeal officer.

AT LARGE: means any animal that is off the premises of the owner, keeper, or custodian and is not within the immediate presence or within reasonable control of such owner, keeper, or custodian.

BODILY INJURY: means physical pain or impairment of physical condition.

CONTROL: means an owner, keeper, or custodian has an animal on a leash, lead rope, harness or other such means or that the owner, keeper, or custodian has an animal in such proximity as to be under the effective voice control of such owner, keeper, or custodian.

NUISANCE: means anything that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, as defined by Utah Code Annotated § 78B-6-1101.

VICIOUS/DANGEROUS ANIMAL: Any animal that approaches any person or domesticated animal in apparent attitude of attack or threat, that bites, inflicts injury, assaults, or otherwise attacks a human being or domesticated animal, or that has a propensity, tendency, history, or disposition to cause injury or to otherwise endanger the safety of human beings or domestic animals. A bite is not necessary to show this propensity. There is a rebuttable presumption that all wild animals are vicious animals. No dog shall be deemed to be vicious or dangerous based solely on their breed. For purposes of this Chapter, “dangerous” and “vicious” shall be interchangeable.

WORRY: To harass by tearing, snapping, chasing, biting, shaking with the teeth or other similar threatening actions.

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 on the Consolidated Fee Schedule of the city council is paid.

E. **Date Due:** The fee due and payable pursuant to this section shall be due March 1. Any owner of a dog found not to be registered and licensed shall be subject to an infraction and associated fine as established by resolution on the Consolidated Fee Schedule.

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 March 1 – End of Feb the following year.

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, a metallic tag shall be issued for each dog so licensed. Once issued, a tag is valid until the dog is no longer registered with Nibley City. Every dog owner 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 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.

9.02.070 Wild Animals

- A. **Unlawful To Own And Possess:** It is unlawful for any person to sell, offer for sale, barter, give away, keep or purchase any "wild animal", as defined in this title, except the animal shelter, a zoological park, veterinary hospital, humane society shelter, or facility for education or scientific purposes may keep such an animal if protective devices adequate to prevent such animal from escaping or injuring the public are provided.
- B. Whenever a prosecution for this offense is commenced under this section, the animal so involved may not be redeemed or released from impoundment, pursuant to the provisions of this chapter, while awaiting final decision of the court as to the disposition to be made of such animal.
- C. **Disposition After Conviction Of Offense:** Upon the trial of any offense under this section, the court may, upon conviction and in addition to the usual judgment of conviction, order the animal control officer or other authorized personnel of the city to put the animal to death or may order such other disposition of the dog as will protect the inhabitants of the city.

9.02.075 Law Enforcement Dangerous Animal Exemption

- A. Properly licensed dogs owned and used by law enforcement agencies, shall be exempt from Dangerous Animal regulations and requirements.

9.02.080 Process for Designation and Disposition of Dangerous Animals

- A. **Petition.** The City, a law enforcement officer, an animal control officer, or any person adversely affected by the behavior of an animal they believe to be dangerous, other than the person designated as the administrative appeal officer, may petition the city's administrative appeal officer for a determination that the animal poses a threat to humans or domestic animals and should be designated as a dangerous animal. Such petition shall include relevant information and evidence describing the animal, the owner, and the circumstances, behavior, and activities that support the petitioner's claim.
- B. **Hearing.** Upon receipt of a petition, the administrative appeal officer shall conduct a hearing to determine whether the animal is vicious and what remedial actions are required. The hearing shall be recorded and shall be informal, provided that administrative appeals officer shall respect the due process rights of the owner or keeper of the animal.
1. **Date of Hearing:** The hearing shall be held within five (5) days after a petition is filed. The parties may agree to a later date.
 2. **Notice of Hearing:** The person owning, keeping, sheltering or harboring the animal in question shall be given not less than seventy two (72) hours' written notice of the time and place of the hearing. Said notice shall set forth the description of the animal in question and the basis for the allegation of viciousness. The notice shall also set forth that if the animal is determined to be vicious, the owner will be required to register and restrain it in accordance with this chapter, remove it from the city, or allow it to be destroyed. The notice shall be served upon any adult residing at the premises where the animal is located or was found, or may be posted on the premises if no adult is present to accept service. If there is no known owner or keeper of the animal the animal shall be impounded.
 3. **Evidence and Argument:** The owner or keeper of the animal shall be entitled to present evidence, call witnesses, and submit arguments to the administrative appeals officer as to whether the animal is vicious, as defined herein, the prior history and disposition of the animal, and the appropriate remedy or action regarding the animal.
 4. **Waiver:** If the owner or keeper fails to appear or attend a hearing after being given notice, the owner or keeper shall be deemed to have waived all defenses and rights and to have consented to the order of the administrative appeal officer.
- C. **Determination of Viciousness.** The following are the types of factors that the administrative appeal officer may consider in determining whether an animal is dangerous, but the officer may consider any and all factors and evidence that are generally reliable and probative:
1. Provocation in any attack by the animal;

2. The nature and severity of the attack, injury, or threat to a person or domestic animal by the animal;
 3. Previous history of aggression or viciousness of the animal or inadequate control by the custodian;
 4. Other violations of this chapter related to the animal;
 5. Observable behavior of the animal;
 6. Site and circumstance of the incident or incidents; and
- D. The animal's performance on a generally accepted temperament test. **Mitigating Factors:** In determining whether or not a animal shall be declared a vicious animal, the administrative appeals officer shall consider, as a mitigating factor, that the actions of the animal were "provoked", as defined in this chapter, or that the actions of the animal were in defense of human beings or property and were reasonable and proportionate in relation to the threat to such human beings or property.
- E. **Burden of Proof:** It shall be the burden of the entity or person petitioning to designate an animal as vicious to provide by a preponderance of evidence that the animal is dangerous.
- F.
- G. **Order; Registration Required:** If, after the hearing, the administrative appeals officer determines that an animal is dangerous or vicious, as defined in this chapter, the administrative appeals officer shall issue an order with their findings and shall order the person owning, sheltering, harboring or keeping the animal to license, register, and keep the animal in compliance with this chapter, remove it from the city, or to cause it to be destroyed in a humane manner in accordance with NCC 9.02.100. Such order shall explain the appeal process set forth herein. The order shall be in writing and shall immediately be served upon the owner or keeper of the animal and the petitioner.
- H. **Compliance; Order to Show Cause:** The owner or keeper of the vicious animal shall comply with the order of the administrative appeals officer to register and license the animal in accordance with this chapter, remove the animal from the city, or destroy the animal in a humane way. If the owner or keeper of the vicious animal does not comply with the order of the officer within ten (10) days of service, and the owner or keeper has not appealed the order to the district court, or if the owner or keeper later violates any order or regulation relating to the keeping and registration of a vicious animal, any appropriate law enforcement, animal control, or other designated officer is authorized to seize and impound the animal. The officer shall set and provide notice of a hearing before the mayor or chief of police, according to the process set forth above, during which the owner or keeper of the animal shall show cause for noncompliance and for why the animal should not be destroyed pursuant to NCC 9.02.100.
- I. **Appeal.** Any party to the proceedings before the administrative appeal officer may appeal the officer's decision to Utah district court by filing such appeal with the court

within 10 days after a determination by the administrative appeal officer. The district court shall conduct such proceedings as an appeal of an administrative decision and shall uphold the decision of the administrative appeal officer unless the decision is arbitrary and capricious, not supported by substantial evidence, or illegal.

9.02.090 Regulation of Dangerous Animals

- A. **Kept in Enclosure, Muzzle, Exercise.** It shall be unlawful for any owner or person responsible for a dangerous animal to allow the animal to be outside of its secure enclosure unless it is either confined indoors in the custodian's dwelling or building, or unless it is necessary for the animal to receive veterinary care, in which case the animal shall be properly leashed and, in the case of a dog which has been designated as a dangerous animal, muzzled with a properly fitted muzzle. Nothing in this section shall prohibit necessary exercise for a dangerous animal provided that it is in the immediate presence of a custodian capable of controlling the animal, and provided the animal is in non-public property within a secure fence or enclosure from which it cannot escape, and which prevents entry by small children.
- B. **Confinement.** Except when leashed, muzzled and under direct physical control, a dangerous animal shall be securely confined indoors or confined in a locked pen or other secure enclosure that is suitable to prevent the entry of children and is designed to prevent and actually prevents the animal from escaping. The enclosure shall include shelter and protection from the elements and shall provide adequate exercise room, light and ventilation. The enclosed structure shall be kept in a clean and sanitary condition and shall meet the following requirements:
1. The enclosure must have secure sides and a secure top;
 2. The enclosure must have a bottom permanently attached to the sides, or the sides must be securely embedded not less than two (2) foot into the ground;
 3. The enclosure shall have a concrete pad for a base, with said pad to be at least 4 inches deep.
 4. The enclosure must be of such material and closed in such a manner that the animal cannot exit the enclosure on its own; and
 5. The enclosure shall be placed as close as practicable to the Owner's dwelling or building with a separate perimeter fence so that it prevents the animal from coming in contact with passersby or children, and may not be located in the front or side yard of a dwelling or other building and shall not be closer than ten feet from a property line.
 6. The enclosure shall be placed within a continuous perimeter fence which shall be at least six feet in height where the law and private property covenants and restrictions allow, shall be maintained in good repair, shall be constructed in a way so as to prevent the ready entry or exit of animals, and shall prevent the entry

of small children who are not of the custodian's family. The enclosure may not be part of or attached to the perimeter fence.

- C. **Signs.** All persons responsible for dangerous animals shall display in a prominent place on their premises, durable, all-weather signs easily readable by the public, at a distance of not less than ten (10) feet using the words "Beware of Dangerous Animal" on all gates to the yard in which the animal is kept and doors to the home through which guests might reasonably be expected to enter, and on all sides of the property which abut a public right of way.

1. All signs shall be 18 inches high and 24 inches wide.
2. All signs shall be purchased by the owner of the dangerous animal and reviewed for acceptance by the City prior to placement on the owner's property.
3. The City Code Enforcement Officer shall be the authority determining compliance with the provisions of this section.

- D. **Marking.** The owner or keeper shall, at his own expense, provide for a permanent identification of a designated dangerous or vicious animal using either of the two methods below:

1. **Tattoo:** The licensing number assigned to the vicious animal, or such other identification number or mark as the city shall determine, shall be tattooed or otherwise permanently and indelibly inked or marked upon such animal by a licensed veterinarian or person trained as a tattooist and authorized as such by statute. The tattoo shall be placed on the upper inner lip, upper left rear thigh, or another conspicuous location on the vicious animal approved by the city.
2. **Microchip:** The owner or keeper shall have the vicious animal microchipped and registered by a licensed veterinarian. The owner or keeper shall provide the city with proof of microchipping, including the name and business address of veterinarian, receipt or invoice documenting the procedure, the name of the microchip company, and the unique microchip identification number assigned to the animal, which information shall be noted on the city licensing files for such vicious animal. If the microchip registration allows additional information to be included with the registration, the owner or keeper shall include a statement that the animal is vicious.

- E. **Failure to Comply.** It shall be unlawful and a misdemeanor for any owner or custodian of a dangerous animal to fail to comply with the requirements and conditions set forth in this section. Any animal found to be in violation of this section shall be subject to immediate seizure and impoundment. In addition, failure to comply with the requirements and conditions set forth in this ordinance shall result in the revocation of the license/permit providing for the keeping of such animal.

- F. **No More than One Dangerous Animal.** In no event shall a person be allowed to keep any other domesticated or dangerous animals if the person has a dangerous animal.

- G. **Other Conditions.** A court may impose other conditions on the keeping of a dangerous animal including but not limited to maintaining additional liability insurance and/or surety bonds, training of animals or custodians, and sterilizing the animal.
- H. **Registering Dangerous Animals.** Any owner or caretaker of a dangerous animal shall register with Nibley City the following minimal information: name, address and telephone number (including work phone numbers), of all responsible parties relating to the animal, to be updated annually. This will also include breed, sex, color, weight, and age of animal, and the type and associated number of the tattoo or microchip.
- I. **Notification.** The owner or caretaker shall notify Nibley City or its designated authority immediately if a dangerous animal is loose, unconfined, has attacked another animal or has attacked a human being, or within twenty four (24) hours if the animal has died or has been sold or has been given away. If the animal has been sold or given away, the owner or caretaker shall provide the police department or its designated authority with the name, address and telephone number of the new owner, who must comply with the requirements of this chapter, provided the animal continues to be kept within the boundaries of the city.
- J. **Minor Owner.** In the event that a minor is the owner or caretaker of a dangerous animal, the parent or guardian of that minor shall be responsible for compliance with the specifications of this ordinance for the care and housing of the animal and shall also be liable for all violations of this chapter and for all injuries and property damage sustained by any person or animal caused by an unprovoked attack by the dangerous animal.
- K. **Vaccinations.** All dangerous animals shall obtain all appropriate vaccinations for the particular species as it relates to the health, safety and welfare of the citizens of the city.

9.02.100 Destruction of Dangerous Animals

- A. **Destruction of Animal:** An order to destroy a dangerous animal shall only issue by the mayor, chief or police, or court of competent jurisdiction, if the reviewing officer finds that the animal poses a threat to the health and safety of people or property and that the destruction of the animal is reasonably necessary to prevent such threat. In determining whether the destruction of the animal is reasonably necessary, the officers shall consider:
1. whether the animal has previously been determined to be vicious; or
 2. whether the animal caused property damage or severe injury to or death of a human being or domesticated animal; or
 3. whether the owner or keeper of the animal has previously failed to comply with this chapter or any order issued thereunder, and there is no good cause for such noncompliance.
- B. **Capture Not Feasible:** If the capture of a dangerous or wild animal cannot be accomplished in order for a hearing to be conducted without serious risk or harm to the law enforcement, animal control, or other authorized officer, and the animal poses a significant threat to the health and safety of the public, the officer shall issue and

sign a statement, under penalty of perjury of the State of Utah, to that effect and transmit such statement to the mayor, who may then authorize the destruction of the animal, where found, by the safest and most appropriate and humane means available. Nothing herein shall prevent any person from killing an animal as set forth in NCC 9.02.160 or as otherwise authorized by law.

9.02.110 Control Of Rabies And Rabid Animals

[No changes]

9.02.120 Animals At Large

No animal shall be allowed to be at large or to be herded, picketed or staked out upon any street, sidewalk or other public place within the limits of the city, and all such animals so found may be impounded. Nothing herein contained shall be so construed as to prevent any person from driving cows, horses, mules or other animals from outside the city limits to any enclosure within the city limits or from any enclosure in the city to a place outside the city or from one enclosure to another within limits of the city.

9.02.130 Dogs At Large

A. Unlawful Acts: It shall be unlawful:

1. For the owner or keeper of any dog to permit such dog to be at large.
2. For the owner or keeper of any dog to permit such dog to go upon or be upon the private property of any person without the permission of the owner or person entitled to the possession of such private property.
3. For the owner or keeper of any dog to permit such dog to be on the owner's or the keeper's property outside of a building or structure without securing the dog or property by fence, barrier, leash, cord, chain, or other similar restraint such that the dog is prevented from being at large.
4. It is unlawful for any owner, keeper, or custodian of a dog to permit, directly or indirectly, such dog to run at large where, while at large, such dog is a nuisance and causes bodily injury to any individual who has not provoked the dog in a manner that caused the dog to injure the individual.

B. Violation Regardless Of Precautions: The owner of any dog at large in violation of this section shall be held strictly liable for such violation, regardless of the precautions taken to prevent the escape of the dog and to prohibit it from running at large and regardless of whether the dog damages, harms, or injures any person, animal, or property.

- C. **Declared Nuisance:** Any dog at large in violation of the provisions of this section may be declared to be a nuisance and a menace to the public health and safety, and the dog may be taken up and impounded as provided in this chapter.

9.02.140 Prohibited Acts And Conditions

- A. **Disposition Of Dead Animals; Violation:** The owner of any animal or fowl that has died or been killed shall remove or bury the carcass of such animal within ten (10) hours after its death; provided, that no horse, cow, ox or other animal shall be buried within City limits.
- B. **Diseased Animals:** It shall be unlawful for any person to bring into the city for sale or have in his possession with intent to sell or offer for sale, any animal which has a communicable disease or which has been exposed to or which is liable to carry infection from a communicable disease.
- C. **Diseased Animals For Human Consumption:** It shall be unlawful for any person to bring into the city for sale or to sell, or offer for sale any cattle, sheep, swine, fish, game, fowl or poultry which is diseased, unsound, and unwholesome or which for any other reason is unfit for human food.
- D. **Female Dogs In Heat:** The owner of a female dog in heat shall cause such dog to be penned or enclosed in such a manner as to preclude other dogs from attacking such female dog or being attracted to such female dog so as to create a public nuisance. Any dog found in violation of the provisions of this subsection is hereby declared to be a nuisance and a menace to the public health and safety, and the dog may be taken up and impounded as provided in this chapter.
- E. **Harbor Stray Dogs:** It shall be unlawful for any person to harbor or keep within the city any lost or stray dog. Whenever any dog shall be found which appears to be lost or stray, it shall be the duty of the finder to notify the city recorder or animal control officer, who shall impound such animal for running at large contrary to the terms of this chapter. If there shall be attached to such dog a license tag for the then current fiscal year, the animal control officer shall notify the person to whom such license was issued, at the address given on the license.
- F. **Loud Animals:** No person shall own, keep or harbor any animal which by loud, continued or frequent barking, baying, crying, howling, whining, yelping, meowing, or by any other noxious or offensive noise shall annoy, disturb or endanger the health, peace, and welfare of any person or neighborhood for an extended period of time. Such extended period of time shall consist of either of incessant noise for thirty (30) minutes or more or intermittent noise for sixty (60) minutes or more during any twenty four (24) hour period. Civil or criminal citations may be issued to owners and keepers of

an animal that makes noise in violation of this chapter that the enforcing officer did not see or hear based upon a complaint signed under penalty of perjury lodged by a member of the community who has been disturbed by the animal. All complainants must clearly identify themselves by stating their name, address, and telephone number. The complainant shall complete a noise log provided by the City, which describes the offense, the date, time, place and duration of the offense, and if known, the name of the animal's owner, the owner's address and telephone number, and a description of the animal. The log shall be signed by the complainant under penalty of perjury under the laws of the state of Utah. After receiving a completed barking log, the responding officer or agency shall determine the validity of the complaint and if the complaint is determined to be valid, shall issue a written warning, if it is a first time offense. The owner of the animal shall be granted a ten (10) day correction period to resolve the issue prior to issuance of a citation. The following circumstances do not constitute a violation of this section:

1. . Noise generated by animals at the city dog pound or other location authorized by the city for the keeping and impoundment of animals, veterinary hospitals, or medical laboratories.
2. Noise generated by an animal due to a person is trespassing or threatening to trespass upon private property in or upon which the animal is situated;
3. Noise generated by an animal that is being teased or provoked by a person or animal; and
4. Noise generated by an animal that is working or being kept in connection with an active agricultural operation.

G. **Trespassing Animals:** It shall be unlawful for any owner or caretaker of any domestic fowl or animal to permit such fowl or animal to trespass upon the premises of another person.

H. **Dogs in Prohibited Places:** Dogs are prohibited at Firefly Park and on the interior of painted athletic fields.

9.02.150 Impounding

A. **Duty Of Official To Impound:** It shall be the duty of every police officer, animal control officer, or other designated official to apprehend any animal found in violation of this chapter and to impound such animal in the pound or other suitable place.

B. **Impoundment of Dangerous Animal:**

1. An animal alleged to be dangerous or displaying dangerous tendencies, or if the animal is suspected to be in violation of any other provision of this chapter, or if the animal is a wild animal, may be seized and impounded if:

- a. the animal is at large;
 - b. the officer determines that probable cause exists that the animal poses a threat to the health and safety of human beings or domesticated animals;
 - c. the officer determines that the owner or keeper of the animal has failed to comply with a lawful order related to the animal; or
 - d. the officer obtains a warrant.
 2. An officer who impounds an animal alleged to be dangerous or displaying dangerous tendencies shall file a petition to designate the animal as a dangerous animal under NCC 9.02.080.
 3. Any animal impounded under this subsection shall not be released to the owner, but shall continue to be held at the expense of the owner pending the outcome of the dangerous animal hearing and all appeals. All costs of such impoundment or quarantine shall be paid by the owner if the animal is determined to be dangerous or in violation of this chapter. If the animal is not determined to be dangerous or in violation of this chapter, all costs of such impoundment or quarantine shall be paid by the city. The animal may be released upon payment of a bond or surety, in an amount set by the city council.
 4. It shall be the duty of the owner or person having custody or control of any dangerous or vicious dog or other animal, upon request, to assist in the capture of such dog or other animal.
- C. **Registry of Impounded Animals:** The animal control officer, or other designated official, upon receiving any animal, shall make a complete registry, entering the breed, color and sex of such animal and whether, if necessary, the animal is licensed. If licensed, they shall enter the name and address of the owner and number of the license.
- D. **Interference With Impounding Prohibited:** It shall be unlawful for any person to hinder, delay, interfere with, or obstruct an officer engaging in seizing, capturing, securing, or taking to the animal pound any animal or animals liable to be impounded, or to break open or in any manner directly or indirectly aid, counsel or advise the breaking open of any animal pound or ambulance, wagon or other vehicle used for the collecting or conveying of animals to the animal pound.
- E. **Records Maintained:** The animal control officer shall keep a record of each animal impounded by him, the date of receipt of such animal, the date and manner of its disposal and, if redeemed, reclaimed or sold, the name of the person by whom redeemed, reclaimed or purchased, the address of such person, the amounts of all fees received or collected for or because of the impounding, reclaiming or purchasing thereof, together

with the number of any tag and the date of any tag exhibited or issued upon the redemption or sale of such animal.

- F. **Notice of Impoundment:** The impounding officer or the animal control officer shall notify the owner of an impounded animal of the impoundment and the redemption and release procedures and requirements as soon as practicable after impoundment. If the owner of the animal is not known, notice of the impoundment of the animal shall be posted publicly by reasonable means, such as by posting on a publicly accessible website or physical posting at a public location.
- G. **Redemption Of Impounded Animals:** Any animal impounded as a licensed or unlicensed animal may be redeemed and taken from such pound by the owner or any authorized person upon exhibiting to the animal control officer or person having charge of said pound a certificate of registry, as provided in subsection A of this section, showing that the license imposed by this chapter has been paid for such animal, a receipt showing that all fines imposed for violation of this chapter have been paid, and upon paying the person in charge of the pound an impounding fee as established by resolution of the city council for each and every day such animal shall have been impounded. All impounded animal not redeemed within five (5) days may be sold for the best price obtainable at either private or public sale, and all monies received from such sales shall be paid daily to the city treasurer. All animals that are not sold or redeemed in the required time shall be disposed of in a humane manner.
- H. **Disposition Of Unclaimed Or Infected Animals:** All impounded animals not redeemed within five (5) days of the date of impounding may be destroyed or sold to the person first making written request for purchase at such price as may be deemed agreeable. Dangerous animals that are impounded may be destroyed pursuant to NCC 9.02.100. In the case of animals severely injured or having contagious disease other than rabies and which in the animal control officer's judgment are suffering and recovery is doubtful, the animal control officer may destroy the animal without waiting the five (5) day period, provided that, before destroying the animal the officer shall obtain the opinion of a veterinarian, or of two reputable citizens called to view the animal in the officer's presence, or shall obtain consent to the destruction from the owner of the animal.

9.02.160 Animals Attacking

- A. **Unlawful:** It shall be unlawful for the owner or keeper of any animal, except for animals used by law enforcement officers and agencies, to allow such animal to attack, chase or worry any person, any domestic animal, any species of protected wildlife or domestic fowl, or to trespass upon or damage property not under the ownership or control of the owner or keeper of the animal.

- B. **Defense:** It shall be a defense to liability under this section if the following circumstances apply:
1. The animal was properly confined on the owner's or keeper's premises; or
 2. The animal was defending human beings, domestic animals, or other property, and the animal's actions were reasonable and proportionate in relation to the threat to such human beings, domestic animals, or other property.
- C. **Owner Liability:** The owner in violation of subsection A of this section, shall be strictly liable for violation of this section. In addition to being subject to prosecution under subsection A of this section, the owner of such animal shall also be liable in damages to any person injured or to the owner of any animals injured or destroyed thereby.
- D. **Animals May Be Killed:** Any person may kill an animal while it is committing any of the acts specified in subsection A of this section or while such animal is being pursued thereafter.
- E. **Animals May Be Impounded:** An animal committing or who committed any of the acts specified in subsection A of this section may be impounded as set forth in NCC 9.02.150.

9.02.170 Animal Waste

The owner or any person having control over or charge of any dog or other animal shall be responsible for the clean-up, removal, and proper disposal of any feces deposited by such dog or animal in any public place, including, but not limited to, sidewalks, streets, planting strips, parking lots, parks, recreational areas, on private property not in the ownership or control of the person having control or purporting to have control over or charge of such dog or animal, or in any drinking water source protection zone and any other place that may befoul or pollute any spring, stream, well, watershed area, or water source used for culinary water.

9.02.180 Penalty

- A. The city may enforce violations of this chapter through both civil and criminal remedies, either separately or concurrently. The administrative process set forth herein shall not be construed as a limitation on the city's right to prosecute violations of this chapter as a criminal matter.
- B. Any person violating any section of this chapter shall be guilty of an infraction and subject to penalty as provided in the current approved Consolidated Fee Schedule and as set forth in NCC 1.08.

- C. It is unlawful for any person to violate any section or subsection within this Chapter, pertaining to an individual's dog, where the City has imposed a fine on the individual for violating the same provision on three prior occasions within the previous 12 months and each of the three prior violations involve the same dog as the current violation. A violation of this subsection is a class B misdemeanor and upon conviction, shall either be fined an amount not to exceed the amount permitted by Utah Code Annotated § 76-3-301 or be imprisoned in the county jail for not more than six (6) months, or shall receive both such fine and imprisonment

9.06.040 Disturbing The Peace

1. **Excessive Noise Prohibited:** It is unlawful for any person to make, continue, or cause to be made, or allow to be made Excessive Noise in violation of NCC 7.16.

1.

2. **Construction or Repair of Buildings:** No construction or repair of buildings, including site excavation and grading, shall take place between the hours of ten o'clock (10:00) p.m. and seven o'clock (7:00) a.m., except in case of urgent necessity in the interest of public health and safety and with the permission of the Public Works Director.
3. No gasoline or diesel engines, chainsaws and/or other woodcutting equipment capable of producing Excessive Noise, or gasoline or electric powered lawn care equipment, or like equipment shall be used between the hours of ten o'clock (10:00) p.m. and seven o'clock (7:00) a.m. in any residential area, regardless of the underlying zoning district.
4. **Exceptions:** The prohibitions against disturbing the peace as set out in this section shall not apply to the following:

1. Emergency work;
2. A governmental agency acting within the scope of its functions (e.g.: snow removal);
3. Utility work performed by employees of utility companies within the hours permitted for construction set out in this chapter;
4. Such other work or activities as may be authorized by the City Planner, Public Works Director, or the City Manager.

5. **Unlawful Assembly:** It is unlawful for two (2) or more persons to assemble together for the purpose of disturbing the peace or for the purpose of committing an unlawful act and not to disperse upon the command to do so by an officer. It is unlawful for any person, except public officers and persons assisting in preserving the peace, to remain present at the place of such lawful assembly.
6. **Injury to Property:** It is unlawful for any person to willfully or maliciously destroy, injure, deface, mutilate, remove, pull down, break, or in any other manner interfere with

public property; or any real or personal property belonging to, or under the control of, any person, or any public entity.

19.02.110 Violation; Penalty

- A. Nuisance: Any structure made or existing, and any use of land, in violation of any provisions of this title, is a public nuisance and may be abated by appropriate proceedings.
- B. Misdemeanor: Any person violating or causing or permitting the violation of any of the provisions of this title shall be guilty of a class C misdemeanor and, upon conviction thereof, shall be subject to penalty as provided in NCC 1.08, unless otherwise defined by this Chapter. Such person shall be deemed guilty of a separate offense for each and every day during which any portion of any violation of this title is committed, maintained, continued or permitted by such person, and shall be punishable as herein provided.

19.34.110 Violation; Penalty

Infraction: Any owner subject to this section who shall fail to comply with the notice or order given pursuant to this section shall be guilty of an infraction and, upon conviction thereof, subject to penalty as provided in the current approved Consolidated Fee Schedule and as set forth in NCC 1.08. The fine shall be assessed for each animal in violation of this section.

Agenda Item #20 & 21

Description	Public Hearing: Ordinance 23-15 — Amending NCC 7.16.010-050 Noise Regulations and Discussion & Consideration: Ordinance 23-15 — Amending NCC 7.16.010-050 Noise Regulations (Second Reading)
Presenter	Levi Roberts, City Planner
Recommendation	Hold the public hearing. Move to Continue Ordinance 23-15 — Amending NCC 7.16.010-050 Noise Regulations.
Reviewed By	Mayor, City Manager, City Planner, Planning Commission, City Attorney, Cache County Sheriff's Office, City Prosecutor

Background

Amendments are being proposed to these ordinances, to make the ordinances more enforceable.

ORDINANCE 23-15

AMENDING NCC 7.16.010-050 NOISE REGULATIONS

WHEREAS, Nibley City desires to keep citizens from suffering undo burdens from excessive noise; and

WHEREAS, adopting the appropriate processes will help to ensure that Nibley City's Noise ordinance violations are effectively upheld within the City;

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

1. The attached amendments to Nibley City Code 7.16.010-050 are adopted into Nibley City Code.
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 _____, 2023.

Larry Jacobsen, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

7.16 Noise Regulations

7.16.010 Findings and Authority

The city council finds that:

1. Excessive and unreasonable noise constitutes a nuisance and may be injurious to health and the quiet enjoyment of property.
2. The reasonableness of noises and sound depend on the location, time, type, and purpose of the sound.
3. The City has authority pursuant to Utah Code 10-8-47, 10-8-60, and 10-8-76 to declare unreasonable noise, as defined by this chapter, to be a nuisance and to regulate and restrain the same based on the location, time, type, and purpose of the sound.

7.16.020 Definitions

The following definitions apply to this chapter:

1. “A-Weighted Sound Pressure Level” means the sound pressure level as measured with a sound level meter using the A-weighting network, denoted as dBA.
2. “Ambient Sound” means the sound pressure level which represents the summation of the sound from all the discrete sources affecting a given site over a given measurement period, which shall not be less than 10 minutes, exclusive of the source under investigation.
3. “Daytime” means the hours between 7:00 AM and 10:00 PM.
4. “Nighttime” means the hours between 10:00 PM and 7:00 AM.
5. “Noise” means sound that may be harmful to health.
6. “Noise Level” means the level of sound measured over a period of not less than 10 minutes.
 - a. “Tenth Percentile Noise Level” means the A-weighted sound pressure level that is exceeded 10 percent of the time in any measurement period, such as the level that is exceeded for 1 minute in a 10 minute period.
 - b. “Ninetieth Percentile Noise Level” means the A-weighted sound pressure level that is exceeded 90 percent of the time in any measurement period, such as the level that is exceeded for 9 minutes in a 10 minute period.
7. “Owner” means any person who alone or jointly and severally with others has legal title to any premise, dwelling, or dwelling unit or has charge, care, or control of any premises, dwelling, or dwelling unit, as legal or equitable owner, agent of the owner, or is an executor, administrator, representative, trustee, or guardian of the estate of the owner.

8. "Person" means any individual, public or private corporation and its officers, partnership, association, firm, trustee, executor of an estate, the State or its departments, institutions, bureau, or agency thereof, municipal corporation, county, city, or any legal entity recognized by the law.
9. "Receiving property" means any property, including an individual unit of a multi-dwelling or multi-use property, that is adversely affected by noise transmitted by another property or from another unit within the same multi-dwelling or multi-use property.
10. "Type A Property" means a property used solely for residential purposes.
11. "Type B Property" means a property used for any other use allowed in Nibley City, including but not limited to, agriculture, retail, offices, repair, restaurants, gasoline stations, and more.

7.16.030 Regulation of Noise

1. Noise. The making and creation of unreasonable noise, as set forth below, is hereby declared to be a public nuisance and may be abated, regulated, and controlled as such.
2. No person shall emit, nor shall any person cause, allow, permit, or fail to control the emission of any noise source so as to exceed the allowable Ninetieth Percentile Noise Level for the type of property from which the noise emits, when measured at the receiving property.
 - a. Type A Property:
 - i. Daytime: 60 dBA.
 - ii. Nighttime: 50 dBA.
 - b. Type B Property:
 - i. Daytime: 70 dBA.
 - ii. Nighttime: 60 dBA.
 - c. The maximum sound levels are reduced by 5 dBA for stationary sources of sound that emit continuous sounds that continue for at least 10 minutes or more, pure tones of a consistent pitch, or repetitive or impulse sounds that result in similar noise levels at reasonably uniform intervals of time.
3. No person shall emit, nor shall any person cause, allow, permit, or fail to control the emission of any stationary source of sound that creates a tenth percentile sound pressure level greater than 15 dBA above the ambient sound pressure level of any measurement period.

7.16.040 Exceptions

The following shall be exempt from these regulations:

1. Agricultural operations, including agricultural equipment and livestock kept as part of an agricultural operation.
2. Emergency events, equipment, and vehicles.
3. Commercial or personal emergency power generators operating during power failure or outage.
4. Fireworks and explosives in accordance with state and local regulations.
5. Heating, Ventilation, and Air Conditioning (HVAC) systems, if the system is in good repair and operating within manufacturer's specifications.
6. City, school, or other governmental approved events, within the parameters of such approvals.
7. Snow removal equipment.
8. Temporary or short-term use of equipment or machinery for construction, maintenance, or cleaning during daytime hours.
9. Other temporary exceptions may be granted with the approval of the City. In granting exceptions, the City shall strive to limit the amount of noise generated or allowed during nighttime hours.

7.16.050 Enforcement

Violations of this chapter may be enforced by any means available to the City, including by abatement, civil citation, or criminal prosecution. Violations of this chapter shall constitute a class "C" misdemeanor, and each day that the violation continues shall constitute a separate offense, unless otherwise required by NCC 1.08.

Agenda Item #22 & 23

Description	Public Hearing: Ordinance 23-16 — Deleting NCC 15.04.030.H Sewer Lateral Lines and Amending NCC 15.04.040.E Installation of Building Sewer and Discussion and Consideration: Ordinance 23-16 — Deleting NCC 15.04.030.H Sewer Lateral Lines and Amending NCC 15.04.040.E Installation of Building Sewer (Second Reading)
Presenter	Tom Dickinson, City Engineer
Recommendation	Hold the public hearing. Move to approve Ordinance 23-16 — Deleting NCC 15.040.030. Subsection H- Sewer Lateral Lines. Also Amending NCC 15.04.040.E Installation of Building Sewer.
Reviewed By	Mayor, City Manager, City Engineer, City Attorney

Background

Staff's reason for recommending change to Nibley City Code regarding Building Sewer Service Laterals is two-fold:

1. Current code 15.04.030.H- Sewer Lateral Lines is located under a Code section that primarily addresses septic systems when a property is required to connect to the City's sewer system.
2. Current code places avoidable risk and responsibility of a portion of Building Sewer Service Lateral Lines onto the City for maintenance and repairs.

NCC 15.04.030 subsection H has been found to be located in the wrong section of City code. NCC 15.04.030 primarily addresses septic systems and regulates when a property owner is required to connect to the City's wastewater system. It is recommended that code regarding Building Sewer Service Laterals be located in Section 15.04.040- Sanitary And Building Sewers And Connections; Rates.

Current City code 15.40.030.H places the responsibility for repairing breaks and similar failures of sewer service laterals onto the City starting from the sewer main and extending to the property line of the facility being served. Responsibility for breaks and similar failures lies on the property owner from the property line to the facility served. Each property owner is responsible for any blockage or similar impediment for the entire length of the lateral line from the sewer main to the facility being served.

The origin of Nibley City's split responsibility for sewer service laterals is unknown but it is speculated that the City took ownership and responsibility for them when the system was originally installed whereas the City's contractor stubbed laterals to each developed property for owners to connect to. It is logical that the City expressly warrantied the portion of the sewer lateral that the City's contractor originally installed and assumed responsibility at the time of installation.

Nibley's original sewer main and laterals have been in service for approximately 20 years and have proven adequate. A typical sewer lateral in Nibley services a single home, but with the rapid expansion of multi-family projects, a lateral now sometimes serves up to 12 units. Having multiple units discharging to a single sewer service lateral increases the likelihood of blockages and could increase the likelihood of higher and more frequent maintenance costs.

Under current code, the responsibility for repair is subject to whether the sewer lateral line is broken or blocked and where it is located. Determining the cause and location of a blockage or break is somewhat tricky and can add risk to the City. It is necessary to enter private property (sometimes homes) and Nibley City does not have the equipment to inspect laterals. If there is a blockage or break, a licensed plumber is needed to inspect and determine where and why the lateral is blocked. If the City hires the plumber to find the cause, the City then becomes responsible for payment regardless of findings.

City staff contacted the Utah Governments Trust (the Trust) to discuss the issue. The Trust is Nibley City's insurance provider for liability of sewer and other matters. To mitigate liability to the City of flooding from sewer back-ups caused by a broken or blocked sewer lateral, the Trust recommended that ownership and responsibility of sewer laterals be shifted to the property owners served.

It is staff's opinion that shifting responsibility of sewer laterals onto the property owner being served is common throughout the region and does not place an undue burden onto property owners. A quick survey of communities surrounding Nibley City (Millville, North Logan, Hyrum, and Logan) shows that sewer laterals are owned and maintained by the owner of the property being served while sewer mains are owned by the community providing the service.

Recommendation

Staff recommends deleting (NCC) Nibley City Code 15.40.030.H- Sewer Lateral Lines and amending NCC 15.04.040.E- Installation of Building Sewer shifting responsibility of Building Sewer Laterals to the property owner being served and addressing its proper location in City code.

RESOLUTION 23-16

**DELETING NIBLEY CITY CODE 15.04.030.H- SEWER LATERAL LINES
AMENDING NIBLEY CITY CODE 15.04.040.E-INSTALLATION AND
MAINTENANCE OF BUILDING SEWER**

WHEREAS, Nibley City manages, supervises, operates, and maintains the citywide wastewater system.

WHEREAS, Nibley City is subject to risk from unlawful discharges, and damage due to blockages, overflows, and failures of the sewer system and sewer main lines.

NOW, THEREFORE, be it ordained by the City Council of Nibley City, Utah, as follows:

1. The City Council finds that there is good cause and that it is in the interest of the public welfare, health, safety, and City infrastructure to delete Nibley City Code Sections 15.04.030.H- Sewer Lateral Lines in its entirety.
2. The City Council finds that there is good cause and that it is in the interest of the public welfare, health, safety, and City infrastructure to amend Nibley City Code section 15.04.040.E- Installation and Maintenance of Building Sewer.
3. All ordinances, resolutions, or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall be in full force and effect immediately upon its approval and adoption.

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

Larry Jacobsen, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

15.04.030 Private Wastewater Disposal

- A. Permitted: Where a public sanitary or combined sewer is not available under the provisions of NCC 15.04.020(D), the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this section.
- B. Permit; Fee: Before commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit from the governmental entity with jurisdiction. The application for such permit shall be made on a form furnished by the appropriate governmental entity, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary. A permit and inspection fee shall be paid as required at the time the application is filed.
- C. Compliance; Inspection: Permission to use the system for a private wastewater disposal system shall not become authorized until the installation is completed in compliance with the approved plans applicable with all state and local codes, and this chapter. Authorized city employees shall be allowed to inspect the work at any stage of construction. The applicant for the permit shall notify the city recorder when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within forty eight (48) hours of the receipt of notice by the city recorder.
- D. State Compliance; Minimum Lot Area: The type, capacities, location and layout of a private wastewater disposal system shall comply with all recommendations of the department of environmental quality of the state of Utah. No permit shall be issued for any private wastewater disposal system employing subsurface soil absorption facilities where the area of the lot is less than one-half (1/2) acre. No septic tank or cesspool shall be permitted to discharge to any natural outlet.
- E. Connection To Public System; Time Limit: At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in NCC 15.04.020(D), a direct connection shall be made to the public sewer within one hundred eighty (180) days, in compliance with this policy, and the private disposal system shall be disconnected, safely abandoned and made inoperable in compliance with applicable laws and regulations.
- F. Maintenance: When a public sewer is not available, the owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, and at no expense to the city.

G. Additional Requirements: No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by the Utah state department of environmental quality.

HISTORY

Adopted by Ord. 01-01 2-1-2001 on 3/3/2001
Amended by Ord. 04-01 on 1/22/2004

15.04.040 Sanitary And Building Sewers And Connections; Rates

E. Installation and Maintenance Of Building Sewer and Connecting Lines: All costs and expenses incidental to the installation, connection, and maintenance of the owner's building sewer and connecting lines shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation and maintenance of the owner's building sewer and connecting lines. Unless provision is expressly made for the alternative ownership of sewer lines by means of a written agreement, all sewer mains, sewer laterals, and other sewer connections and facilities shall be owned and maintained as follows:

1. Sewer mains shall be deemed to be the property of the city of Nibley and subject to its absolute control and supervision even though actual installation may have been performed by a developer or other property owner.
2. All sewer lines or laterals from the point of connection to the sewer main to the point of connection at the facility, residence, or other structure(s) served by such connecting line or lateral shall be the responsibility of and be owned by the owner(s) of the property being served by such line or lateral. Such owner shall be solely responsible for any physical or piping failures or damage that occur along any portion of the lateral or line, including the point of connection to the sewer main. The property owner shall also be responsible for all blockages or similar impediments of the waste water flows for the entire length of the lateral line from the sewer main to the facility being served. The city of Nibley accepts no liability nor responsibility for any blockage in or damage to a connecting line or lateral. All connections to the sewer main, and any work affecting a sewer main or public right of way shall comply with applicable Nibley City regulations, including permitting requirements and construction standards.

Agenda Item #24

Description	Discussion and Consideration: Ordinance 23-17: Amending NCC 21.02.090 Regarding Subdivision Fees Administration (First Reading)
Presenter	Levi Roberts, City Planner
Staff Recommendation	
Planning Commission Recommendation	A public hearing for this ordinance was held at the 4-13-23 Planning Commission meeting. Move to approve Ordinance 23-17: Amending NCC 21.02.090 regarding Subdivision Fees Administration and waive second reading.
Reviewed By	Mayor, City Manager, City Engineer, City Planner, Planning Commission

Background

The primary purpose of this amendment is to update references to subdivision application deposits to a flat fee. Previously, a deposit was assessed, primarily for engineering review. At the time, the City contracted for engineering review services and any leftover funds were refunded to the applicant. The City has since hired an in-house engineer and adopted a fee to cover the cost of engineering review, as part of the subdivision application fee.

In addition to this change, there are some recommended adjustments to the timing of fee assessments to be consistent with other provisions of Nibley City Code and standard practice. For example, the application fee is due at time of application. All other applicable fees need to be paid prior to recording the plat.

ORDINANCE 23-17

AMENDING NCC 21.02.090 REGARDING SUBDIVISION FEES ADMINISTRATION

WHEREAS, Nibley City regulates land use, including the review of subdivision applications; and

WHEREAS, appropriate fees have been adopted to cover the cost of review of such applications; and

WHEREAS, it is necessary to establish a timeline with benchmarks to ensure fees are administered appropriately;

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

1. The attached amendments to Nibley City Code 21.02.090 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 _____, 2023.

Larry Jacobsen, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

21.02.090 Fees

1. Subdividers shall pay non-refundable application and other applicable fees for each of the preliminary plat(s), final plat(s) and plat amendments as listed on the Consolidated Fee Schedule, approved by resolution of the City Council, to cover costs including, but not limited to, staff review, legal review and engineering review. Application fees shall be paid at the time of submission of the subdivision application. All other applicable fees must be paid in full prior to the recordation of any approved plat(s).