



Joint NIBLEY CITY COUNCIL MEETING & NIBLEY CITY PLANNING COMMISSION AGENDA
Thursday, June 22, 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 June 8, 2023, City Council Meeting Minutes and the Current Agenda (Chair)
4. Planning Commission Report
5. Public Comment Period¹ (Chair)
6. **Workshop:** Animal Land Use Ordinance

Adjourn Joint City Council/Planning Commission Meeting

Nibley City Council Meeting

7. **Public Hearing:** CIB grant funding application – Seeking Public Input in Consideration of \$30,000 Grant for the Nibley City Storm Water Master Plan
8. **Public Hearing:** Ordinance 23-26 - Code Enforcement Procedure – Amending NCC 7.02 and adopting NCC 1.08.030
9. **Discussion and Consideration:** Ordinance 23-26 - Code Enforcement Procedure – Amending NCC 7.02 and adopting NCC 1.08.030 (First Reading)
10. **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 (Third Reading)
11. **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 (Third Reading)
12. **Discussion & Consideration:** Ordinance 23-15 — Amending NCC 7.16.010-050 Noise Regulations (Third Reading)
13. **Discussion and Consideration:** Resolution 23-09 - Regulating the Use of Fireworks within Nibley City (First Reading)
14. **Discussion & Consideration:** Contract Amendment--Amending Justin Maughan’s Employment Contract for City Management Services

Adjourn to Closed Session

15. Discussion of the Purchase, Exchange, or Lease of Real Property & Pending or Reasonably Imminent Litigation Pursuant to Utah Code 52-4-205

Adjourn to Open Session

16. Council and Staff Report

Adjourn

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

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

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6-22-23 Council Meeting Change Summary
(changes made to the agenda item report since 6-16-23)

- Milestones adjusted in JM's contract
- Items 1-9 were renumbered to 7-15 for clarification
- Background was added to the Agenda Item Report for items 9, 10, 11, 12, and 14 (previously items 3-6 and 8)

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Joint Nibley City Council and Nibley City Planning Commission Meeting

Agenda Item #6

Description	Workshop: Animal Land Use
Presenter	Levi Roberts, City Planner
Staff & Planning Commission Recommendation	Discuss and provide feedback
Reviewed By	Mayor, City Manager

Background:

As Nibley City has continued its efforts to enforce its municipal code, several cases regarding animal land use have come to light. Those cases are not limited to a single species of animal or a single plot of land. The objective of this joint workshop with the Planning Commission and City Council is to review the existing code and consider whether it is appropriate for Nibley City. If the feeling prevails that a code change is worth considering, it would be appropriate to discuss a process that would generate proposed changes to the existing code. The workshop could briefly discuss possible changes to the code, but the intent of this workshop is not to bypass the public process that could eventually lead to a code change.

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City Council Meeting

Agenda Item #7

Description	Public Hearing: CIB grant funding application – Seeking Public Input in consideration of \$30,000 grant for the Nibley City Storm Water Master Plan update
Presenter	Justin Maughan, City Manager
Staff Recommendation	Encourage public participation and input on updating the stormwater master plan and funding sources, no formal action is necessary other than the public hearing.
Planning Commission Recommendation	
Reviewed By	Mayor, City Manger

Background:

City staff has applied for a \$30,000 matching grant through the Permanent Community Impact Fund Board Grant & Loan Program (CIB). The CIB is a program of the state of Utah which provides loans and/or grants to state agencies and subdivisions of the state which are or may be socially or economically impacted by mineral resource development on federal lands. The source of funding through CIB is the mineral lease royalties returned to the state by the federal government. This Public Hearing encouraging public input is intended to satisfy CIB requirements for grant application.

The CIB program requires all applicants to have a vigorous public participation effort. All applicants shall hold a formally noticed public hearing to solicit comment concerning the size, scope and nature of any funding request. A complete scope of work is required to be given to the public and it's financing and be documented in the minutes. The information shall include the financial impact to the public as user fees, special assessments, or property taxes. CIB reserves the right to require further public hearings if it determines an applicant did not adequately disclose to the public possible financial impact of the financial assistance.

The grant will be used to update the Nibley City Stormwater Master Plan. The total cost of the update is estimated to be \$60,000. Utilizing the \$30,000 matching CIB funds reduces the City's out of pocket cost to \$30,000. The latest update to the Stormwater Master Plan was performed in 2015. The proposed update will focus heavily on gathering stormwater and canal data and mapping canals, ditches, and other stormwater conveyances. The update will also provide stormwater analyses of current,

future, and buildout needs along with suggested stormwater capital improvement projects, schedules, and budget estimates. Lastly, the update will provide a user fee analysis to determine appropriate stormwater utility fees now and projected into the future.

The cost of updating the Stormwater Master Plan will not directly increase cost to user fees, special assessments, or property taxes.

The public is encouraged to participate in discussion and comment of the following:

- Updating the City's Stormwater Master Plan;
- The size and scope of the plan update (reference detailed scope of work and cost estimate);
- Potential impact to user fees, special assessments, or property taxes;
- Funding sources including the City's portion and grant from CIB;
 - \$60,000 total
 - \$30,000 from CIB and
 - \$30,000 City match

Staff Recommendation:

Encourage public input and comment on updating the Stormwater Master Plan and funding sources.

June 14, 2023

Nibley City, Utah
Attn: Tom Dickinson, City Engineer
455 West 3200 South
Nibley, UT 84321

Subject: Storm Water Master Plan Cost Estimate

Dear Mr. Dickinson

Sunrise Engineering, Inc. (SEI) has been requested to provide a cost estimate for the updating of the Nibley City Storm Water Master Plan for budgetary purposes. This cost estimate is not an official proposal for services but is a cost estimate to provide general items of scope and magnitudes of cost. If and when Nibley City pursues a Storm Water Master Plan, the scope and cost should be evaluated through an official RFP.

GENERAL SCOPE OF SERVICES

Phase 0001 – Data Collection

Task 001 Collect Existing Storm Water Utility Info: ENGINEER will work with the CITY to gather the existing storm water data using past master plan data and approved subdivision construction drawings. The master plan data and the construction drawings will be provided to the ENGINEER for usage and review by the CITY. This information will be verified and augmented during the field collection task.

Task 002 Irrigation Field Data Collection: ENGINEER will map the following three irrigation systems that service the area within and around Nibley City:

- Nibley Blacksmith Fork Irrigation Company
- Clear Creek Irrigation Company
- College Irrigation company

This mapping will include the following elements:

- Diversion Structures
- Storm Water Inlets
- Storm Water Outlets
- Debris Collection Areas,
- Access Boxes (along buried sections)
- Any other notable features

This data will be collected with a survey grade GPS system (weather and vegetation permitting), and mapping grade when necessary.

Task 003 Review of Plat Information: The ENGINEER will augment the data collected in the field with information gathered from subdivision plats in terms of location of buried sections. Plat maps will be reviewed for irrigation easements and storm water easements to help identify buried systems that are not noticeable from a surface investigation.

Phase 0002 – Off-site Drainage Hydrologic Study

The intent of the off-site drainage hydrologic study is to provide information regarding the peak discharges and volumes of stormwater runoff that will be generated in each individual major watershed (draining to Nibley City) during a design storm event.

1. Delineate watershed boundaries contributing to the Nibley City area based on the available USGS topographic maps, available DEM, or LiDAR models.
2. Conduct a watershed inspection to locate and verify major natural and manmade runoff paths (channels, culverts, and bridges, if any) and observe the land cover conditions of the watershed.
3. Perform a hydrologic analysis by using a hydrograph routing model (HEC-I, HEC-HMS, WMS...) to obtain the regulated or City required design hydrographs or peak discharges (i.e. 100-year, 50-year or 25-year return period storm events).
4. Calibrate the model using historical records (if available).
5. Summarize and map the watershed hydrologic study results.

Phase 0003 – On-site Hydrologic Study

The purpose of the on-site hydrologic study is to provide information regarding the peak discharges and volumes of stormwater runoff that will be generated in each stormwater management area (SWMA) during a design storm event.

1. Divide the Nibley City area into sub-drainage basins or SWMAs and delineate the SWMA boundaries.
2. Conduct a field inspection to verify and correct the delineations. This step can be performed at the same time as the watershed inspection (see Task 2).
3. Setup a hydrograph routing model (HEC-I, HEC-HMS, WMS...) or a simplified hydrologic analysis model (TR-55, or Rational equation) for each SWMA to obtain the regulated design peak discharges or other flood frequencies as requested by the City.
4. Summarize and map the onsite hydrologic study results.

Phase 0004 — Existing Facility Evaluation

Evaluate the capacity and overall conditions of the existing major stormwater conveyance and storage facilities using the output from the off- and on-site hydrologic analyses. A few existing systems will need specific attention; they are as follows:

- Interactions with the irrigation systems and the storm water systems
- Hansen – Zilles Storm Water Basin and Pond
- Sunrise Storm Water Basin and Pond

Phase 5 — Recommend Improvements and Land Use

1. Outline an improved drainage system for Nibley City based on the findings from Tasks 1 through 4.
2. Evaluate land use and zoning areas using the current land use maps and the Future Land Use Plan currently held by Nibley City.
3. Determine, analyze, prioritize, and recommend major stormwater control facilities (possibly including curb and gutter, channels, pipeline system, culverts, detention/retention basins, etc.).
4. Prepare a conceptual drainage system design (Master Planning) for City's review.
5. Estimate preliminary costs related to the drainage system improvements.
6. Modify the conceptual design (and cost estimate) based on City review comments.
7. Prepare stormwater management guidelines for the City for future developments.
8. Prepare a Storm Water Master Plan report. The report will include all the findings from the study. Provide a final deliverable in electronic format.

Phase 0006 – User Rate Analysis

- Task 001 Financial Evaluation: The user rate will provide Nibley City with the needed finances to operate and maintain their storm water system. The user rate will also finance Capital Improvement Projects. This task will evaluate the current and projected financial needs to maintain and operate the storm water system based on past, current and future budgets.
- Task 002 User Rate Analysis: With the selected Capital Improvement Projects and approved financial evaluations, a user rate fee will be recommended.

SUNRISE ENGINEERING
COST ESTIMATE BREAK-DOWN

Phase	Task	Work Task Description	Fee	Fee Type*
0001		Data Collection	\$18,000	Lump Sum
	001	Collect Existing Storm Water Utility Info		
	002	Irrigation Field Data Collection		
	003	Review of Plat Information		
0002		Off-Site Drainage Hydrologic Study	\$6,000	Lump Sum
0003		On-Site Hydrologic Study	\$9,000	Lump Sum
0004		Existing Facility Evaluation	\$5,000	Lump Sum
0005		Recommend Improvements and Land Use	\$16,000	Lump Sum
0006		User Rate Analysis	\$6,000	Lump Sum
	001	Financial Evaluation		
	002	User Rate Analysis		
Total Estimated Fee			\$60,000	

Agenda Item #8 & 9

Description	Public Hearing: Ordinance 23-26—Code Enforcement Procedure: Amending NCC 7.02 and adopting NCC 1.08.040 and Discussion & Consideration: Ordinance 23-26—Code Enforcement Procedure: Amending NCC 7.02 and adopting NCC 1.08.040
Presenter	Levi Roberts, City Planner
Staff Recommendation	Move to approve Ordinance 23-26— Code Enforcement Procedure: Amending NCC 7.02 and adopting NCC 1.08.040
Reviewed By	Mayor, City Manager

Background:

This ordinance is related to other ordinances which aim to make City Codes more enforceable. This ordinance would adopt a Code Enforcement section, which sets forth a process for issuing administrative citations, which may be administered for any violation of Nibley City Code which is not classified as a class B misdemeanor or above. For nuisance violations, this process would replace what is currently provided and is much less prescriptive about the process which a code enforcement officer would follow prior to issuing a citation. In other words, it provides much more discretion to the Code enforcement officer as to timelines and process for ensuring compliance of Nibley City Code prior to the issuance of a citation. The section also provides a procedure for appeals and collection of fines.

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ORDINANCE 23-26

CODE ENFORCEMENT PROCEDURE: AMENDING NCC 7.02 AND ADOPTING NCC 1.08.040

WHEREAS, Nibley City adopts code provisions for the health, safety and welfare of the community; and

WHEREAS, appropriate processes will ensure that Nibley City's regulations will be effectively upheld;

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

1. The attached Nibley City Code 1.08.040 and amendments to 7.02 be adopted.
2. All ordinances, resolutions, and policies of the City, or parts thereof, inconsistent herewith, are hereby repealed, but only to the extent of such inconsistency. This repealer shall not be construed as reviving any law, order, resolution, or ordinance, or part thereof.
3. Should any provision, clause, or paragraph of this ordinance or the application thereof to any person or circumstance be declared by a court of competent jurisdiction to be invalid, in whole or in part, such invalidity shall not affect the other provisions or applications of this ordinance or the Nibley City Municipal Code to which these amendments apply. The valid part of any provision, clause, or paragraph of this ordinance shall be given independence from the invalid provisions or applications, and to this end the parts, sections, and subsections of this ordinance, together with the regulations contained therein, are hereby declared to be severable.
4. This ordinance shall become effective upon posting as required by law.

PASSED BY THE NIBLEY CITY COUNCIL THIS ___ DAY OF _____, 2023.

Larry Jacobsen, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

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1.08.040 Code Enforcement

A. **Administrative Citation.** The City may issue an administrative citation for civil enforcement for any violation of the City Code. The City Manager, or designee, shall issue the citation containing all requirements described by this Section. Abatement of the violation shall not void or satisfy the fee or penalty assessed for the violation. Nothing in this section or issuance of an administrative citation described in this section shall limit or preclude the City from filing charges in the Justice Court for any violation of the City Code. No administrative citation may be issued for code violations designated as a class B misdemeanor or above. Any Administrative Citation shall carry the penalty as indicated in NCC § 1.08.

B. **Requirements of the Administrative Citation.**

1. Contain a specific statement of the nature of the violation and generally describe the premises on which the violation exists, if applicable.
2. Cite to the specific code section for which the person or business is in violation.
3. Describe the penalty for the cited violation.
4. Inform the person or business that in the event he/she disagrees with the determination of the City Manager, or designee, and that they object to the factual or legal basis for the notice, they may request, in writing, an informal hearing before the administrative appeal officer within 10 days of receiving the notice, together with the required fee set by City Council. A written application for a hearing, including associated fees, shall stay the time within which the person must conform to the provisions of the notice.
5. Inform the person or business that in the event they fail or neglect to correct the objectionable condition, the city will correct the violation—if applicable—and will collect the costs of so correcting the violation by either a court action, in which case they will be assessed such costs, together with reasonable attorney fees and court costs, or will charge the cost of correcting the violation employing all necessary assistance to cause such abated at the expense of the city.
6. Serve the Administrative Citation in writing upon the person or business, either personally or by mailing notice prepaid, addressed to the person or business at their last known post office addresses as disclosed by the records of the county assessor, or as otherwise ascertained.

C. **Procedure for Issuing Administrative Citations.** Upon issuance of the administrative citation, the responding party may: (1) pay the fee assessed and noted on the administrative citation and bring the violation into compliance; or (2) appeal the administrative citation to the City's appeal authority. Any person believing there is a code violation warranting an administrative citation may petition

the city to issue an administrative citation. Such petition shall include sufficient relevant information for the City to substantiate the alleged violation.

D. **Hearing.** Upon receipt of an appeal of an administrative citation, the Administrative Hearing Officer shall conduct a hearing to determine whether there is sufficient evidence to support the City's administrative citation. The hearing shall be recorded and shall be informal, provided that the Administrative Hearing Officer shall respect the due process rights of the parties involved.

1. **Date of Hearing:** The hearing shall be held within twenty-one (21) days after an appeal is filed. The parties may agree to a later date.
2. **Notice of Hearing:** The person filing the appeal shall be given not less than seventy two (72) hours' written notice of the time and place of the hearing.
3. **Evidence and Argument:** The City shall produce sufficient evidence, including presenting evidence, calling witnesses, and making arguments, to support the allegations in the administrative citation by preponderance of the evidence. The party receiving the citation may present evidence, call witnesses, and submit arguments to the Administrative Hearing Officer as to whether the administrative citation is supported. The Administrative Hearing Officer shall apply the Utah Rules of Civil Procedure and in all respect observe the offending party's Constitutional rights.
4. **Waiver:** If the recipient of the administrative citation fails to appear or attend a hearing after being given notice, he or she shall be deemed to have waived all defenses and rights and to have consented to the order of the administrative appeal officer.
5. **Notice Of Decision; Abatement By Owner:** In the event the decision of the administrative appeal officer upholds the determination of the City Manager, or designee, the notice originally given by the code enforcement officer or the city's law enforcement agency as above provided shall be deemed to be sufficient to require the owner or occupant to remove or abate the objectionable objects or conditions, if applicable, and they shall have up to ten (10) days from the date of notice of the decision within which to conform thereto, unless additional time, not to exceed thirty (30) days, is authorized by the code enforcement officer or the city's law enforcement agency.
6. **Time Period For Compliance:** In the event that the decision of the administrative appeal officer either overrules or modifies the determination of the City Manager, or designee, the written decision of the administrative appeal officer shall apprise the owner of that fact and set forth the details and extent to which the owner must make removal or other abatement of the objectionable objects or conditions, if any. The owner shall be required to conform to the decision within ten (10) days after service or mailing a copy of the decision.

7. Filing Of Amended Notice: The City Manager, or designee, shall file an amended notice, if applicable.

E. Failure To Comply; Abatement By City. If any person or business described in such notice or decision to whom the notice was given shall fail or neglect to conform to the requirements thereof relating to the violation of City Code, the City Manager, or designee may employ all necessary assistance to cause such abated at the expense of the city. The City Manager, or designee shall prepare an itemized statement of all expenses incurred in the abatement of code violations, including administrative, personnel, and legal costs, and shall mail a copy thereof to the person or business or both or to persons having an interest in any such property, demanding payment within twenty (20) days of the date of mailing. The notice shall be deemed delivered when mailed by registered mail to the address of record the City. In the event the person or business fails to make payment of the amount set forth in the statement to the city treasurer within the twenty (20) days, the City Manager, or designee may either cause suit to be brought in an appropriate court of law or may refer the matter to the county treasurer as provided in this chapter.

F. Failure To Make Payment: In the event the owner fails to make payment of the amount set forth in the statement to the city treasurer within the twenty (20) days, the code enforcement officer or the city's law enforcement agency may either cause suit to be brought in an appropriate court of law or may refer the matter to the county treasurer as provided in this chapter.

G. Collection:

- a. Lawsuit: In the event collection of expenses of destruction and removal are pursued through the courts, the city shall sue and receive judgment for all of said expenses of destruction and removal, together with reasonable attorney fees, interest and court costs, and shall execute upon such judgment in the manner provided by law. The city may also assign its right to enforce and collect such expenses to a collection agency or other entity for collection, which entity shall have the same right to collect as if they were the city.
- b. Taxes: In the event that the building inspector or the city's law enforcement agency elects to refer the expenses of destruction or removal to the county treasurer for inclusion in the tax notice of the property owner, he shall make in triplicate an itemized statement of all expenses incurred in the destruction and removal of the same, and shall deliver three (3) copies of the statement to the county treasurer within ten (10) days after the completion of the work of destroying or removing such weeds, refuse, garbage, objects or structures. Thereupon, the costs of the work shall be pursued by the county treasurer in accordance with the provisions of Utah Code § 10-11-4, as amended, and the recalcitrant owner shall have such rights and shall be subject to such powers as are thereby granted.

- H. **Appeal.** Any party to the proceedings before the Administrative Hearing Officer may appeal the officer's decision to Utah district court by filing such appeal with the court within 28 days after a determination by the Administrative Hearing Officer. The district court shall conduct such proceedings as an appeal of an administrative decision and shall uphold the decision of the Administrative Hearing Officer unless the decision is arbitrary and capricious, not supported by substantial evidence, or plainly illegal.
- I. **Administrative Hearing Officer.** There is created the position of Administrative Hearing Officer. The City Manager shall designate the Administrative Hearing Officer. Any City employee, the mayor, or member of the city council, other than the individual who issued the administrative citation, may act as the Administrative Hearing Officer.
- J. **Code Enforcement Officer.** There is hereby established the position of code enforcement officer, whose duty shall be to enforce the provisions of the City Code. Until a code enforcement officer is designated, the city manager, or designee, or the city's law enforcement agency shall enforce the provisions of the City Code.
- K. **Criminal Proceedings:** The commencement of criminal proceedings for the purpose of imposing penalties for violations of this chapter shall not be conditioned upon prior issuance of a notice or the granting to the defendant an opportunity to abate or remove the nuisance. The provisions of this chapter relating to notice and abatement shall be deemed merely alternative and additional methods of securing conformity to City Code.

7.02.060 Abatement Procedure

The City Manager, or designee, may enforce the provisions of this chapter, including the issuance of administrative citation, according to the proceedings of NCC 1.08.040

7.02.070 Penalty For Failure To Comply

- A. Infraction: Any owner subject to this chapter who shall fail to comply with the notice or order given pursuant to this chapter shall be guilty of an infraction and, upon conviction thereof, subject to penalty as provided in NCC 1.08.010 for each offense, and further sum as listed on the current approved Consolidated Fee Schedule. ~~for each and every day such person fails to comply beyond the date fixed for compliance.~~ For nuisances ~~related to an individual's use of the individual's residence,~~ the individual shall be subject to prosecution for each 14-day time period the violation continues, ~~each of which periods shall be considered a separate violation. For all other nuisances, each day shall be considered a separate violation.~~
- B. Class C Misdemeanor: Any owner subject to this chapter who shall fail to comply with the notice or order given pursuant to this chapter may be charged with a class C misdemeanor if the nuisance threatens the health, safety, or welfare of the individual or an identifiable third party or the individual has been convicted of a violation of this chapter on three previous occasions within the past 12 months.
- C. Criminal Proceedings: Compliance by any owner subsequent to the commencement of criminal proceedings as provided in this chapter shall not be admissible in any criminal proceeding brought pursuant to this section.

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Agenda Item #10

Description	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
Presenter	Levi Roberts, City Planner
Staff Recommendation	Move to approve 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

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.

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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

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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 his 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 or jobbing 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. He 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. Administrative citations shall follow the process set forth in NCC 1.08.040.

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, he 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 his 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 he 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 his 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 him at a regular place of business maintained by him 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 him, 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 his behalf.

3. Burden Of Proof: The appellant has the burden of proof to show that the application should be granted.

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 he understands and has read and complied with the requirements, and that he possesses the qualifications specified in the alcoholic beverage control act and this chapter. If the applicant is a copartnership, 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 his 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 his 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 he 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 his 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 his 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 he 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 his 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 his 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 his own evidence in support of his 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 Use 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 his 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

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

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 he is 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 his or her 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 his 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, he or she 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 his 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 his or her 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 his last known address or at the address shown on his 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 his 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 he is 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. Administrative citations shall follow the process set forth in NCC 1.28.

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 him 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

5.12.010						Defined
5.12.020			Permit			Required
5.12.030		Application		For		Permit
5.12.040		Issuance		Of		Permit
5.12.050	Control	Of	Animal	And	Fowl	Facilities

5.12.060 Existing Businesses And Facilities

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

5.14.010	Title	For	Citation
5.14.020	Purpose	Of	Provisions
5.14.030	Application	Of	Provisions
5.14.040			Definitions
5.14.050			Classification
5.14.060	License		Required
5.14.070	Issuance	Of	License
5.14.080			Fees
5.14.090			Inspection
5.14.100	Expiration	Of	License
5.14.110			Suspension
5.14.120			Revocation
5.14.130	Hearing; Denial, Revocation, And Suspension;		Appeal
5.14.140	Transfer	Of	License
5.14.150	Hours	Of	Operation
5.14.160	Exhibition Of Sexually Explicit Films Or Videos		
5.14.170	Loitering, Exterior Lighting, Visibility, And Monitoring Requirements		
5.14.180	Penalties	And	Enforcement
5.14.190	Applicability Of Chapter To Exisisting Businesses		
5.14.200	Prohibited		Activities
5.14.210	Scienter Required To Prove Violation Or Business Licensee Liability		
5.14.220	Effect Of City Failure To Act		

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 Scierter 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

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Agenda Item #11

Description	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 (Third Reading)
Presenter	Levi Roberts, City Planner
Staff Recommendation	Move to approve Ordinance 23-14 –Amending NCC 1.08, 9.02, 9.06, 19.02.110, and 19.34.110 Regarding Nibley City Animal Code Enforcement
Planning Commission Recommendation	
Reviewed By	Mayor, City Manager

Background:

Code updates are recommended to be in compliance with State Law, and to make it more enforceable.

Summary of major changes:

1. Changed penalty for animal code violations 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.

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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

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1.08.010 Sentencing

- A. **Penalty For Violation Of Ordinance:** Unless otherwise specifically authorized or governed by state statute, the city 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 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 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. **Sentencing Schedule 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.

DOMESTIC ANIMAL: means any animal commonly kept as a pet in family households in the United States, including, but not limited to, dogs, cats, guinea pigs, rabbits, pigmy pigs, and hamsters; and any animals commonly kept for companion or commercial purposes.

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. 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. Each application shall state at the time application is made for such license the owner's name and address, the sex, breed and color of each dog owned or kept by the applicant.

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 Vicious/Dangerous Animals

- A. Any person may make a complainant of an allege vicious/dangerous animal as that term is defined herein to the animal control officer or a police officer of the City. Such officer(s) shall immediately inform the complainant of his right to commence a judicial hearing as provided for in Subsection B of this section, and if there is reason to believe the animal is a "dangerous" animal, the officer shall forthwith commence such judicial hearing himself.
- B. Any person may, and any police officer, or animal control officer acting within the scope of his statutory duties, shall make a complaint under oath or affirmation of an alleged vicious/dangerous animal as that term is defined herein to any municipal judge or justice. Thereupon, the judge or justice, shall immediately determine if there is probable cause to believe the animal is a dangerous/vicious animal and, if so, shall issue an order to any police officer pursuant to his statutory duties or animal control officer directing such officer to immediately seize such animal and hold same pending judicial determination as herein provided. Whether or not the judge or justice, finds there is probable cause for such seizure, he shall, at the next available court date, and upon written notice of not less than three (3) days to the owner of the animal, hold a judicial hearing on the complaint.
- C. Where an animal is determined pursuant to clear and convincing evidence at a duly constituted hearing to be "vicious/dangerous", the judge or justice, shall require the owner of said animal to register such animal with the City, and to provide prompt notification to the City of any changes in the ownership of the animal; names, addresses and telephone numbers of new owners; any change in the health status of the animal; any further instance of attack; any claims made or lawsuits brought as a result of further instances of attack, or the death of the animal.

The owner must, at the time of licensing, provide proof of a fully paid homeowners or rental insurance policy containing a personal liability clause in the minimum amount of three hundred thousand dollars (\$300,000.00). The City must be listed on the policy as an additional insured. In addition, the owner shall comply with all of the following:

1. **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.

2. **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:
 - a. The enclosure must have secure sides and a secure top;
 - b. 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;
 - c. The enclosure shall have a concrete pad for a base, with said pad to be at least 4 inches deep;
 - d. The enclosure must be of such material and closed in such a manner that the animal cannot exit the enclosure on its own;
 - e. 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; and
 - f. 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.
3. **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.
 - a. All signs shall be 18 inches high and 24 inches wide.
 - b. 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.

- c. The City Code Enforcement Officer shall be the authority determining compliance with the provisions of this section.
4. **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:
 - a. **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.
 - b. **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.
5. **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.
6. **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.
7. **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.
8. **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.

9. **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.
 10. **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.
 11. **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.
- D. **Remedies.** Notwithstanding the above requirements, the judge or justice may, considering the best interest of public safety and wellness, order the person owning, sheltering, harboring or keeping a dangerous animal to remove it from the city or to cause it to be destroyed in a humane manner in accordance with NCC 9.02.100
- E. If an animal has been determined to be a "dangerous animal" by a judge or justice following a hearing as described above, and is involved in another attack initiated by the dangerous animal against a human being or another domesticated animal, the judge or justice shall order the humane destruction of the animal.
- F. **Duty to Report.** Any person having knowledge of an animal biting or attacking a human or another domesticated animal shall report such bite or attack to law enforcement or the City.

9.02.100 Destruction of Dangerous Animals

- A. **Destruction of Animal:** An order to destroy a dangerous animal shall only be issued by the mayor, Sherrif or chief of 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 officer 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, unless the owner or keeper has actual

physical control over the dog by voice command and the dog strictly obeys the voice commands.

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.

Declared Nuisance: Any animal 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 animal 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, lowing, whining, howling, 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; or
 - 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;
or
 - 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 animal, upon request, to assist in the capture of such 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:
1. Handled per an approved contract with an animal holding facility; or
 2. 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 animal shall be responsible for the clean-up, removal, and proper disposal of any feces deposited by such 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 animal, or in any drinking water source protection zone and any other place that may defoul 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 administrative citation 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 1.08.010.
- C. It is unlawful for any person to violate any section or subsection within this Chapter, pertaining to an individual's animal, 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 animal 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.

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Agenda Item #12

Description	Discussion and Consideration: Ordinance 23-15 — Amending NCC 7.16.010-050 Noise Regulations (Third Reading)
Presenter	Levi Roberts, City Planner
Staff Recommendation	Move to approve Ordinance 23-15 — Amending NCC 7.16.010-050 Noise Regulations
Planning Commission Recommendation	
Reviewed By	Mayor, City Manager, City Planner

Background:

Amendments are being proposed to these ordinances, to make the ordinances more enforceable. In this Chapter, amendments are being proposed to change violations from civil to administrative and changing the penalty from a class C misdemeanor to an infraction.

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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

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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, administrative citation, or criminal prosecution. Violations of this chapter shall constitute an infraction, and each day that the violation continues shall constitute a separate offense, unless otherwise required by NCC 1.08.010.

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Agenda Item #13

Description	Discussion and Consideration: Resolution 23-09 – Regulating the Use of Fireworks within Nibley City (First Reading)
Presenter	Justin Maughan, City Manager
Staff & Planning Commission Recommendation	Move to approve Resolution 23-09 – Regulating the use of Fireworks within Nibley City and waive the Second Reading
Reviewed By	Mayor, City Manager

Background:

Utah Code Sections 15A-5-202.5 and 53-7-225 provide that municipalities may regulate and prevent the discharge of fireworks in certain areas with hazardous environmental conditions. New statutory requirements require the County to issue a map by June 1 of each year showing the areas where fireworks are prohibited. The recommendation from staff and Mayor Jacobsen is to continue the City's practice of prohibiting fireworks east of SR 165/Main Street in Nibley from June – November 2022.

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RESOLUTION 23-09

A RESOLUTION REGULATING THE USE OF FIREWORKS WITHIN NIBLEY CITY

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

WHEREAS, Utah Code Annotated, Sections 15A-5-202.5 and 53-7-225 provide that municipalities may regulate and prevent the discharge of fireworks in certain areas with hazardous environmental conditions; and WHEREAS, the Nibley City Council finds that it is in the interest of the health, safety and welfare of the inhabitants of Nibley City to prohibit the use of fireworks in areas that are more prone to dangerous and deadly wildfires; and

WHEREAS, the State of Utah, Cache County, and Nibley City are experiencing drought conditions and dry brush and vegetation is prevalent and poses an extreme fire danger.

NOW, THEREFORE, BE IT RESOLVED, BY THE NIBLEY CIY COUNCIL THAT:

1. The use of all fireworks east of SR 165/Main Street in Nibley is prohibited from June 1 –November 30, 2023.
2. No fireworks shall be allowed in a public park including parking lots.
3. Professionally licensed and insured shows west of SR 165/Main Street in Nibley are exempt from this Resolution.
4. This resolution shall take effect immediately upon passage.

Dated this _____ day of _____, 2023.

Larry Jacobsen, Mayor

ATTEST: _____
Cheryl Bodily, City Recorder

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Agenda Item #14

Description	Discussion & Consideration: Contract Amendment- -Amending Justin Maughan's Employment Contract for City Management Services
Presenter	Justin Maughan, City Manager and Mayor Larry Jacobsen
Staff & Planning Commission Recommendation	Approve Contract - Amending Justin Maughan's Employment Contract for City Management Services
Reviewed By	Mayor, City Manager

Background:

Justin Maughan has served as the Nibley City Manager since March of 2021. A review of the contract that was entered into at that time was requested to be reviewed by Mayor Jacobsen, during Justin's annual review last March. Changes to the contract include updating dates, updating salary, updating chart of milestones. Adjustments to the salary were approved during the FY 23/24 Budget process.

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City Manager Employment Agreement

Justin Maughan, PE

Table of Contents

ARTICLE I

- Section 1.01. Term
- Section 1.02. Duties & Authority
- Section 1.03. Ethical Commitments

ARTICLE II Compensation and Benefits

- Section 2.01. Compensation
- Section 2.02. Health, Disability and Life Insurance Benefits
- Section 2.03. Vacation, Sick, and Military Leave
- Section 2.04. Automobile
- Section 2.05. Retirement
- Section 2.06. General Business Expenses

ARTICLE III General Work Conditions:

Section 3.01 Performance Evaluation

Section 3.02. Hours of Work

Section 3.03. Outside Activities

ARTICLE IV Employment Separation:

Section 4.01. Resignation

Section 4.02 Termination

Section 4.03 Severance

ARTICLE V General Covenants:

Section 5.01: Indemnification

Section 5.02 Bonding

Section 5.03 Other Terms and Conditions of Employment

Section 5.04 General Provisions

Section 5.05 Notices

EMPLOYMENT AGREEMENT

This Agreement, made and entered in to this 22 June 2023 by and between Nibley City of the state of Utah, a municipal corporation, (hereinafter called "Employer") and Justin Maughan, (herein after called "Employee") an individual who has the education, training and experience in local government management and who, as a member of the International City/County Management Association (ICMA), is subject to the ICMA Code of Ethics, both of whom agree as follows:

ARTICLE I

Section 1.01 Term

- A. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Council to terminate the services of the Employee at any time, subject to the provisions set forth in Section 4.02 of this agreement.
- B. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position with the City, provided; Employee gives the City at least thirty (30) days written notice of his intent to resign. Unless otherwise agreed upon between the parties, failure to give thirty (30) day notice of resignation shall require the Employee to pay a penalty to the City equal to thirty (30) days' salary, based upon an hourly wage calculated by taking Employee's current salary and dividing by two thousand and eighty (2080), excluding City-provided benefits other than wages.
- C. The City and the Employee both agree the Employee is employed for a three year term, after which this Agreement shall terminate, unless renewed. The term of this agreement shall be renewed thereafter for periods of five years, if such renewal is approved by the Council. Negotiations regarding changes in any renewal agreement shall be commenced six (6) months prior to the end of each term and said negotiations shall be completed at least sixty (60) days prior to the end of each term. The Employee shall give written notice to the Council of the requirement under this agreement to renegotiate a contract six (6) months prior to the end of each term.

- D. In the event the agreement is not renewed, all compensation, benefits and requirements of the agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns.
- E. In the event that the Employee is terminated for any reason other than Employee's breach of this Agreement or Employee's conviction of a felony, as termination is defined in Section 4.02 of this agreement, the Employee shall be entitled to the severance described in Section 4.03 of this Agreement, at the Employee's option. Termination of the Employee shall likewise terminate this Agreement.

Section 1.02: Duties and Authority

- A. Employer agrees to employ Justin Maughan as City Manager to perform the functions and duties specified in ordinance 1.12 of the Nibley City Code and to perform other legally permissible and proper duties and functions as assigned by Employer, subject to any limitations set forth in this Section. Employee shall not be required to accept Employer's assignment of any duties outside of the scope of those customarily performed by persons holding the role of Nibley City Manager in the absence of Employee's express written consent to such assignment. Employer may not reassign Employee to another position in the absence of Employee's express written consent to such assignment. Employer shall not unreasonably interfere with Employee's performance of such duties.
- B. Employee shall be the chief executive officer of the Employer and faithfully perform Employee's lawfully prescribed and assigned duties with reasonable care, diligence, skill, and expertise in compliance with all applicable, lawful governing body directives, state, local, and federal laws, Employer policies, rules, and ordinances as they exist or may hereafter be amended.
- C. Except as may be provided otherwise by applicable law, regulation, or Employer's agreement with any other person, Employee shall have the ultimate supervisory and managerial authority and responsibility to hire, direct, assign, reassign, evaluate, change the terms and conditions of employment, and terminate the employment of all other employees of Employer consistent with the policies of the governing body and the ordinances and charter of the Employer, which authority may be delegated by Employee to such other employees as Employee deems appropriate.

- D. Except as may be provided otherwise by applicable law, regulation, or Employer's agreement with any other person, Employee shall have the authority to establish internal regulations, rules and procedures which the Employee deems necessary for the efficient and effective operation of the Employer.
- E. Employee shall attend and be permitted to attend, whether personally or through a designee of Employee's choosing, all meetings of Employer's governing body, both public and closed, with the exception of those closed meetings devoted to the subject of this Agreement, or any amendment thereto, or the Employee's evaluation, unless otherwise provided by applicable law, regulation, or Employer's agreement with any other person.
- F. Employer agrees to promptly communicate and provide Employee a reasonable opportunity to cure all substantive criticisms, complaints, and suggestions with respect to Employee's performance of services pursuant to this Agreement.
- G. Except as may be provided otherwise by applicable law, regulation, or this Agreement, Employee shall carry out Employer's lawful policy directives, goals, and objectives, as communicated to Employee by Employer's governing body, while presenting information and recommendations that allow for fully informed policy decisions that both address immediate needs and anticipate future conditions.

Section 1.03: Ethical Commitments

The Employer expects the Employee to adhere to the highest professional standards. The Employee's actions will always comply with those standards. The Employee agrees to follow the Code of Ethics of the International City/County Management Association (ICMA) and the ethics rules, regulations, and laws of the State of Utah. The ICMA Code of Ethics can be found on the ICMA website, www.icma.org. Consistent with the standards outlined in the Code, the Employee shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time. Employer shall support Employee in keeping these commitments by refraining from any order, direction or

request that would require Employee to violate the ICMA Code of Ethics. Neither the governing body or any individual member thereof shall request Employee to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fundraising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality and merit.

ARTICLE II

Compensation and Benefits

Section 2.01: Compensation

- A. Base Salary: Employer agrees to pay Employee an annual base salary of 11G (\$119,782.34), payable in installments at the same time that the other management employees of the Employer are paid.
- B. In addition, consideration shall be given on an annual basis to an increase in compensation equal to the same cost of living adjustment if any made to the rest of the Nibley City staff.
- C. Adjustments to Employee base salary will be set forth as outlined in the table below. Adjustments shall be made effective after completion of the milestone and the next annual performance evaluation.

Milestone	Estimated Completion	Base Salary Adjustment	Completed Y/N
Become an active member of UCMA	2021	\$0	Y
Attend UCMA Conference	Annually	\$0	Y
Attend ULCT Mid Year Conference	Annually	\$0	Y
Attend ULCT Annual Conference	Annually	\$0	Y
Complete all 8 online budgeting trainings offered by ULCT	2021	\$0	Y

Complete 25 Trainings from Land Use Academy of Utah	2021	\$0	N
Complete ICMA Emerging Leaders Dev. Program	2021-2022	+\$2,000	Fall of 2023
Become ICMA Credential Candidate	2022 – 2023	+\$2,000	Y
Complete ICMA Leadership Program	2023 - 2024	+\$3,000	Program no longer exists
Become fully ICMA Credentialed	2023-2024	+\$5,000	Fall of 2023 or Spring of 2024
Oklahoma Universite Economic Development Institute	2024		N
Government Finance Officers Association – Budget Analyst Training Academy	2024-2025		N
Government Finance Officers Association - Debt Management Best Practices	2025		N
Government Finance Officers Association – Overview of a Bond Issuance	2025		N

D. At any time during the term of the Agreement, Employer may, in its discretion, review and adjust the salary of the Employee, but in no event shall the Employee be paid less than the salary set forth in Section 2.01.A. of the Agreement except by mutual written agreement between Employee and Employer. Such adjustments, if any, shall be made pursuant to a lawful governing body action. In such event, Employer and Employee agree to provide their best efforts and

reasonable cooperation to execute a new agreement incorporating the adjusted salary.

Section 2.02: Health, Disability and Life Insurance

- A. The Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee, at a minimum, equal to that which is provided to all other employees of Nibley City. If the Employer's insurance requires a waiting period before the Employee is eligible for coverage under Employer's plan, the Employer agrees to reimburse the employee for the costs of COBRA insurance for the same, during the initial waiting period.
- B. The Employer agrees to put into force and to make required premium payments for short-term and long-term disability coverage for the Employee.
- C. Except as otherwise provided in this Agreement, the Employee shall be entitled, at a minimum, to the highest level of benefits enjoyed by and/or available to other employees, department heads, or general employees of the Employer as provided by the Employer's policies, Charter, ordinances, or personnel rules and regulations or other practices.
- D. If the Employee is permanently disabled or otherwise unable to perform his duties because of a non-work-related sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued leave, or for twenty (20) working days over a thirty (30) work-day period, the Employer shall have the option to terminate this agreement, subject to the severance package requirements of Section 4.03 herein

Section 2.03: Vacation, Sick, and Compensatory Time

- A. Beginning the first day of employment, Employee shall be eligible to accrue and use sick leave and vacation leave on an annual basis, at a minimum, at the highest rate provided or available to any other employees, and under the same rules and provisions applicable to other employees.
- B. Employee shall receive one-hundred and sixty (160) hours of vacation leave per year (beginning second year of this contract).

C. Compensatory time (Comp time) shall be accrued by the Employee after forty-five (45) hours of work per week. Said comp time shall be accumulated as straight time up to an unpaid maximum of eighty (80) hours. Anything in excess of that shall be paid out upon accrual, based upon an hourly wage calculated by taking Employee's current salary and dividing by two thousand and eighty (2080). Comp time shall be approved on a monthly basis by the Mayor.

Section 2.04: Automobile

The Employee's duties require exclusive and unrestricted use of an automobile to be mutually agreed upon and provided to the Employee at the Employer's cost, subject to approval by Employer which shall not be withheld without good cause. The Employer agrees to be responsible for paying for liability, property damage, and comprehensive insurance, and for the purchase (or lease), operation, maintenance, repair, and regular replacement of a full-sized automobile for Employee's business use.

Section 2.05: Retirement

The Employer shall immediately, or at the first permissible opportunity, enroll the Employee into the applicable state or local government retirement system, or alternative as allowed by State Statute, and to make all the appropriate Employer contributions on the Employee's behalf.

In addition to the Employer's payment to the state or local retirement system referenced above, the Employer agrees to a 401k match policy in lieu of paying Social Security Tax. Employer will match at a one to one ratio of the Employees contribution into a Roth IRA retirement account, into the Employee's 401k account. The max amount to be matched will be 6.2% of the Employees salary.

Section 2.06: General Business Expenses

A. Employer agrees to budget and pay for professional dues, including but not limited to Professional Engineering License, ICMA and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the

Employee's continued professional participation, growth, and advancement, and for the good of the Employer.

- B. Employer agrees to budget and pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to ICMA annual, regional, and affiliate conferences.
- C. Employer also agrees to budget and pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.
- D. Employer shall not require Employee to use vacation leave when participating in professional development activities.
- E. The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer shall pay for the reasonable membership fees and/ or dues to enable the Employee to become an active member in local civic clubs or organizations.
- F. It is anticipated that the Employee will be involved in certain promotional activities providing business lunches and entertainment which are intended to be for the direct benefit of the Employer and should be paid for by the Employer. The Employee should submit these anticipated expenses for these activities to the Employer during the annual budgetary process.
- G. Recognizing the importance of constant communication and maximum productivity, Employer shall provide Employee, for business use, a laptop computer, software, or tablet computer required for the Employee to perform their duties and to maintain communication with Employer's staff and officials as well as other individuals who are doing business with Employer. Upon termination of Employee's employment, the equipment described herein shall remain the property of the Employer.
- H. Employer shall support the Employee in retaining a Professional Engineering License with the State of Utah.
- I. Employer shall support the Employee in retaining Grade 4 Water Collections and Sewer Collections operator certifications with the State of Utah.

ARTICLE III

General Work Conditions

Section 3.01: Performance Evaluation

- A. Employer shall annually review the performance of the Employee in March subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee.
- B. The annual evaluation process, at a minimum, must include the opportunity for both parties to:
- a) conduct a formulary session where the Employer and the Employee meet first to discuss goals and objectives of both the past twelve (12) month performance period as well as the upcoming twelve (12) month performance period,
 - b) following that formulary discussion, prepare a written evaluation of goals and objectives for the past and upcoming year,
 - c) next meet and discuss the written evaluation of these goals and objectives, and
 - d) present a written summary of the evaluation results to the Employee. The final written evaluation should be completed and delivered to the Employee within 30 days of the initial formulary evaluation meeting.
- C. Unless the Employee expressly requests otherwise in writing, the evaluation of the Employee shall at all times be conducted in executive session of the governing body and shall be considered confidential to the extent permitted by law. Nothing herein shall prohibit the Employer or Employee from sharing the content of the Employee's evaluation with their respective legal counsel.
- D. In the event the Employer determines to modify the evaluation instrument, format and/or procedure, and such modifications would require new or different performance expectations, then the Employee shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.

E. In the event the Employee is an ICMA Credentialed Manager, the multi-rater evaluation tool will be utilized at a minimum of every five years.

Section 3.02 Hours of Work

Employee is expected to work for the Employer during Employer's normal offices hours, except as otherwise authorized by the Mayor. It is recognized that the Employee must devote a great deal of time outside the normal office hours and outside the Employer's normal place of business on business for the Employer.

Section 3.03: Outside Activities

The employment provided for by this Agreement shall be the Employee's primary employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements must neither constitute interference with nor a conflict of interest with their responsibilities under this Agreement. All such activities shall be disclosed to the Mayor and Council prior to commencement.

ARTICLE IV

Employment Separation

Section 4.01: Resignation

Employee may terminate this Agreement by providing a minimum of 30 days' notice of Employee's voluntary resignation subject to any applicable requirements set forth by state or local law.

Section 4.02 Termination

- A. For the purpose of this agreement, termination shall occur when:
- a. The majority of the governing body votes to terminate the Employee at a properly posted and duly authorized public meeting.

- b. If the Employer, citizens or legislature acts to amend any provisions of the Nibley City Code pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.
 - c. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.
 - d. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee resign, then the Employee may declare a termination as of the date of the suggestion.
 - e. A breach of contract, declared by either party, is not cured within 30 days of written notice describing the conduct that constitutes a breach. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 5.03.
 - f. In the event the Council fails to budget for the salary of the Employee as payable under this agreement, thereby making it impossible to make payment hereunder, that act shall be considered a termination of this agreement and the severance pay set forth shall be paid by the Employer.
 - g. The Employee becomes disabled, as defined in Section 2.02.D.
 - h. The Employee is convicted of a felony.
- B. Employee's refusal to comply with a directive that violates the ICMA Code of Ethics shall in no event serve as cause for termination.

Section 4.03 Severance

Severance shall be paid to the Employee when employment is terminated as defined in Section 4.02. This section survives termination of the Agreement until fully discharged.

- A. If the Employee is terminated, the Employer shall provide a minimum severance payment equal to six (6) months' wages, including all allowances and stipends normally provided to Employee. This severance shall be paid in a lump sum or in a continuation of salary on the existing payroll schedule, at the Employee's option.
- B. The Employee shall be compensated for all vacation leave, all accrued Comp Time leave, 50% of sick leave up to 240 hours, and all paid holidays. The Employer agrees to make a contribution to the Employee's deferred compensation account on the value of this compensation calculated using the then current annual salary of Employee at the date of termination divided by two thousand and eighty (2080) hours. If the amount of the contribution under this Section exceeds the limit under the Code for a contribution to the Deferred Compensation plan, the remainder shall be paid to the Employee in a lump sum as taxable compensation.
- C. For a minimum period of six (6) months following termination, the Employer shall pay the cost to continue the following benefits:
 - a. Health insurance for the employee and all dependents as provided in Section 2.02 (A), after which time, Employee will be provided access to health insurance pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA").
 - b. Life insurance as provided in Section 2.02(D).
 - c. Short-term and long-term disability as provided in Section 2.02(B).
 - d. Car allowance or payment of lease as provided in Section 2.04.
 - e. Out placement services should the employee desire them in an amount not to exceed [\$10,000 to \$15,000 recommended], and
 - f. Any other benefits available to other employees.
- D. If the Employee is terminated because of a felony conviction or for breach of this Agreement, then the Employer is not obligated to pay severance under this section.
- E. The termination and severance of Employee must be in accordance with the "Separation Agreement" agreed to by Employer and Employee. A template for such agreement is available from ICMA.

F. If in the event the Employee retires or leaves his position with the Employer, giving at least thirty (30) days written notice of intent, he shall receive a cash payout of 100% of his unpaid, earned vacation and accrued comp leave and 50% of his unpaid earned sick leave up to a maximum of 240 hours.

ARTICLE V

General Covenants

Section 5.01: Indemnification

To the maximum extent permitted by law, the Employer must defend, save harmless and indemnify the Employee from and against any costs, fines, judgments, fees, expenses, damages, suits, claims, demands, actions, or awards, including but not limited to Employee's reasonable attorney's fees incurred in such action and in enforcing this indemnification provision, incurred in connection with any tort, statutory, constitutional, professional liability, or other cause of action, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager, even if said claim is brought/filed following Employee's separation from employment or based upon Employee's own alleged negligence or misconduct, provided that at the time of the alleged act or omission the Employee was then acting within the scope of his/her duties. Under these circumstances only, the Employer (and/or its insurer) must pay the amount of any settlement or judgment rendered thereon, and further, the Employer (and/or its insurer) may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon without recourse to the Employee.

In connection with those claims or suits involving the Employee in his/her professional capacity, the Employer must defend the Employee and/or must retain and pay for an attorney to represent the Employee (including all fees and costs) in connection with any such suit, claim, complaint, mediation, arbitration, or similar actions.

This Section survives the termination of this Agreement.

Section 5.02: Bonding

Employer shall bear the full cost of any bonds that Employee is required to obtain by any law or ordinance.

Section 5.03: Other Terms and Conditions of Employment

The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Nibley City code, local ordinances, or any other law.

Except as otherwise provided in this Agreement, the Employee shall be entitled, at a minimum, to the highest level of benefits that are enjoyed by or offered to other general employees of the Employer as provided in the Charter, Code, Personnel Rules and Regulations, collective bargaining agreements, or by practice.

Section 5.04: General Provisions

- A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the Employer and Employee are merged into and rendered null and void by this Agreement. This Agreement may be amended only by an express written agreement signed by the Employer and Employee. Such amendments must be incorporated and made a part of this agreement.
- B. Successors in Interest. The provisions of this contract will be binding upon and will inure to the benefit of the parties, and their respective successors and approved assigns, if any.
- C. Effective Date. This Agreement becomes effective on 22 June 2023 and will continue until terminated as set forth herein.
- D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions are deemed to be in full force and effect as if they have been executed by both Employer and Employee subsequent to the expungement or judicial modification of the invalid provision.

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