



**Nibley City  
Planning Commission**

Wednesday, November 16, 2016  
455 W. 3200 S.  
Nibley, UT

5:30 p.m.      Call to Order  
                    Approval of Agenda  
                    Approval of Minutes

**Ordinance Revision**

1. Public hearing regarding an update to the Nibley City Fence Ordinance
2. Discussion and consideration of an update to Nibley City Fence Ordinance 16-06
3. Public hearing regarding the proposed Nibley City Canal Ordinance
4. Discussion and consideration of a proposed Nibley City Canal Ordinance 16-07
5. Staff Report

*Planning Commission agenda items may be tabled if: 1) Additional information is needed in order to take action on the item; OR 2) The Planning Commission feels there are unresolved issues that may need further attention before the Commission is ready to make a motion. **No agenda item will begin after 10:00 p.m. without a unanimous vote of the Commission.** The Commission may carry over agenda items, scheduled late in the evening and not heard, to the next regularly scheduled meeting.*

*IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES WILL BE PROVIDED UPON REQUEST. FOR ASSISTANCE, PLEASE CALL 752-0431 A MINIMUM OF 24 HOURS BEFORE THE MEETING.*

## Agenda Item #: 1 and 2

<b>Description</b>	Discussion and consideration of an update to Nibley City fence ordinance 16-06
<b>Department</b>	Planning
<b>Presenter</b>	Stephen Nelson, City Planner
<b>Sponsor</b>	NA
<b>Applicant</b>	NA
<b>Background</b>	<ul style="list-style-type: none"><li>• The fence ordinance that is coming before the commission is only addressing some concerns that have been brought up in the discussion the commission has had over the past couple of weeks. The main concern that is being address is fence height along pedestrian R-O-Ws. There has been some discussion about enforcement of fence code and if anything else should be done for corner lots. These concerns have been noted by staff and will be continued on a later date. The reason this ordinances is before you today is that the City Council would like to address the fencing along pedestrian R-O-W at their next council meeting.</li><li>• After doing some more research about the Mayor's proposal for the frontage of corner lots, staff believes there needs to be some more research done to insure it is implemented properly.</li><li>• The proposal to limit opaque fences and landscaping elements height to 4' ft for along walkways and trails that run between personal property is contained in section C. The reason is being proposed to create safe trails and to avoid creating alleyways.<ul style="list-style-type: none"><li>○ (C)(1): This section list out the guidelines for fences and landscaping that may exceed four feet in height.</li><li>○ (C)(2): this section lists the guidelines for fences and landscaping that may not exceed four feet in height.</li><li>○ It is also important to note that section A excludes trails in public parks.</li></ul></li><li>• The following are the Mayor's suggestions:</li><li>• "As we have begun to implement the provisions of our subdivision ordinance that require pedestrian walkways and trails, we've realized that it creates a public safety issue. The fence ordinance needs to be revised to reflect this. There are some great examples of fences that allow for the compromise between private property and public responsibility, but essentially, the discussion in Council has been that 6 ft privacy fences along the 20 ft ROW for trails are a bad idea from a public safety/liability standpoint. We have examples of this at a couple of places in town and we need to get a handle on it before we inadvertently create spaces for bad things to happen while we are trying to do good things.</li></ul>

"We've also had a problem with the interpretation of code for fence permits on corner lots that effectively allows corner lot owners to use a loophole to build privacy fences to lot lines on one or both sides of the house if the house is set at an angle on the lot. This makes for issues with neighbors where the neighbor is governed by a different setback than the corner lot and results in dumb looking fences. That's the technical term.

"I've proposed a couple of solutions below. I'd like P&Z to weigh in on these. I don't feel that they are substantive changes that require a whole lot of agonizing; we should try them and if we don't get it exactly right, we will change them again till we do get them right but these need to be implemented soon, preferably this month so when spring construction/permits start, we can be ready. Please have something to the Council ASAP. Ideally, Council will consider this and do our public hearing at our meeting Nov 19 and pass it in our December meeting.

"Fence Ordinance key points

- Public Safety along Trails and other Public Rights of Way:
  - PROPOSAL: For fences along trails and similar public rights of way that are open to public non-motorized access, the following fence types are permitted (insert photographs). All heights given are as measured from the centerline of the public trail surface:
    - Post and Rail fences
    - Field Fences
    - Barbed Wire
    - High Tension Wire
    - Other types that are maximum 20% opaque
    - Opaque fences or hedges not exceeding 42" height
    - Chain Link to 42" height
  - The following types are specifically not permitted
    - Opaque fences exceeding 42" height
    - Chain link exceeding 42" height
    - Opaque fences to 42" high with lattice or other construction above the 42" level that is more than 20% opaque
- Clarification for fencing on corner lots
  - For all corner lots or other irregular lots with frontage on more than one side to a public or private road: For the purposes of fencing, all frontage facing a public or private road shall be regarded as Front Yard for the purpose of

	determining setbacks and compliance with the fence ordinance. (Insert pictures to show examples)"
<b>Recommendation</b>	Recommend to the City Council for adoption
<b>Financial Impact</b>	
<b>Reviewed By</b>	City Planner, City Manager, City Attorney, Mayor, Planning and Zoning Commission

### Agenda Item #: 3 and 4

<b>Description</b>	Discussion and consideration of an update to Nibley City canal ordinance 16-07
<b>Department</b>	Planning
<b>Presenter</b>	Stephen Nelson, City Planner
<b>Sponsor</b>	NA
<b>Applicant</b>	NA
<b>Background</b>	<p>Staff and the City Attorney have been working to create a canal ordinance. The goal of this ordinance is to reduce conflicts that has occurred between the canal companies and adjacent land uses. There have been some issues in the past that the canal companies in Nibley were not able to access their canals for maintenance and repairs. Parts of this ordinance have been taken from an agreement that that the City entered into with the Nibley Blacksmith Fork Canal Company. This ordinance would formalize those aspects of the agreement. The canal companies are being sent a copy of the ordinance so they might comment at the future public hearing or otherwise provide input.</p> <p><b>Setback:</b></p> <ul style="list-style-type: none"><li>• It is being proposed that a 15' ft. setback and then a 5' ft. setback be place on an open canal and 10' setback (on each side) be place on a piped canal. The reasons for these setback is the City has an agreement with NBFI Canal Company outlines such a setback. There is a provision within our agreement that will allow the 15' ft. setback to go along just one side of the canal if all parties can agree that just one 15' setback is necessary.</li><li>• To encourage new developers to provide this set back through a deeded public R-O-W, they will be provided a 10% density bonus. This ordinance also gives us the option to require a developer to submit a Preliminary Plats to be submitted to the local canal company.</li></ul> <p><b>Section 5</b></p> <ul style="list-style-type: none"><li>• This is taken from an agreement from NBFI Canal Company. The reason it has only been applied to NBFI is because these were concerns that NBFI had for their canal. Staff and the City Attorney did not believe it was necessary to be applied generally to all canal companies in the City.</li></ul>
<b>Recommendation</b>	Recommend to the City Council for adoption
<b>Financial Impact</b>	
<b>Reviewed By</b>	City Planner, City Manager, City Attorney, Mayor, Planning and Zoning Commission

## **10-12-9 Fence Regulations**

- A. Fence: No fence, wall or other similar structure or landscaping element shall be erected or maintained in any front yard setback area to a height in excess of four feet (4'); nor shall any fence, wall or other similar structure or landscaping element be erected or maintained in any side or rear yard to a height in excess of seven feet (7') for an opaque fence (eighty percent (80%) or more opaque), e.g., solid wood, and eight feet (8') for a non-opaque (less than twenty percent (20%) opaque) fence, e.g., chain-link, subject to the limitations identified herein for fences bordering Public Trails, Public Walkways and Public Easements for non-motorized vehicles (collectively Public Trails hereafter). Public Trails located in Public Parks are excluded from the fence regulations, conditions and provisions of this Ordinance. Under all circumstances, no structure or landscaping element may interfere with property address identification. Landscaping elements exclude varieties of trees approved by the City Planner or Planning Department. Any conflicts between this Chapter and Chapter 10-11-1 shall be governed by the more restrictive or limiting provision.
- B. Corner Lots:
1. Corner lot fences shall comply with the following:
    - a. No opaque fence, wall or other similar structure shall be erected in any lot bordering a street or front yard of an adjoining lot to a height in excess of four feet (4'). These four-foot fences may be built on the property line.
    - b. Six-foot (6') tall opaque fences adjacent to a street are allowed at the side yard setback line, starting at the corner lot's front-yard setback line and running to the corner lot's rear property line. When the rear yard of a corner lot is adjacent to the front yard of a neighboring lot, the maximum fence height is six feet (6') in the part of corner lot's rear yard that is adjacent to the neighboring lot's front-yard setback area. The following figure shows where six-foot fences are allowed on corner lots. Although this figure shows the front of each house placed at the front-yard setback line, houses may also be placed behind the front-yard setback lines. In this case, the six-foot fence placement is still defined by the setback lines, not by the houses.

(DRAWING)

- c. Setback lines defining the placement of corner-lot fences adjacent to private streets are referenced from the edge of the private-street easement or from the property line, whichever is further from the center of the private street.
    - d. Transparent fences shall conform to the guidelines of section 10-11-1 of this chapter.
  - 2. All fences on corner lots shall comply with the clear view of intersecting streets as defined in 10-12-11 of this chapter.
- C. Fencing or landscaping elements along Public Trails: All fences or landscaping elements adjacent to Public Trails, shall be limited to the following:
  - 1. Fencing or landscaping elements that may exceed four feet (4') but not be more than eight feet (8') in height:
    - a. Post and rail fencing;
    - b. Field fencing;
    - c. High-tension wire fencing; and
    - d. Any other fencing or landscaping elements not exceeding twenty percent (20%) opaque.
  - 2. Fencing or landscaping elements that may not exceed four feet (4') in height:
    - a. Chain-link fencing;
    - b. Hedges or other shrubbery; and
    - c. Any other fencing or landscaping elements exceeding twenty percent (20%) opaque.
  - 3. Fencing or landscaping elements may be combined so long as non-permitted elements do not exceed four feet (4') in height.
  - 4. All heights under this subsection shall be determined based upon the centerline of the Public Trail.
  - 5. Nothing in this subsection shall be interpreted to limit the height of fences or landscaping elements that are adjacent to a street as identified in subpart (E) below.
- D. Elevation Changes: Where there is a difference in the elevation on either side of a fence or a wall, the height of the fence shall be determined by the difference between the top of the fence and the average of two points that are perpendicularly ten feet (10') on either side of the fence.

- E. Opaque fences in rear yards that are adjacent to a street or adjacent to the front yard setback of another lot, shall not exceed six feet (6") in height. Wherever possible and feasible, Nibley City will negotiate a minimum ten-foot (10') public easement between the placement of these six-foot fences and the rear property line.
- F. Fences installed adjacent to a street shall have the finished side facing the street. All gates that adjoin public property or Public Trails shall open inward (toward the property owner's lot).
- G. Fences shall not be built within one foot (1') of a sidewalk or the projected location of a future sidewalk.
- H. Access to a rear yard is required for emergency purposes and shall be at least four feet wide.
- I. A permit is required to build a fence. Nibley City staff shall have the authority to review and grant permit applications for fences consistent with this Ordinance. Citizens may appeal staff decisions to the Nibley City Planning Commission within ten (10) days after approval or denial of a permit.



**ORDINANCE 16-07**  
**AN ORDINANCE PRESERVING THE**  
**SAFETY AND ALLOWING FOR MAINTENANCE OF CANALS AND WATERWAYS**

WHEREAS, Nibley City has an ownership interest in all canal and/or irrigation companies within the City; and

WHEREAS, Nibley residents rely on free-flowing and clean canals and waterways for the conveyance of irrigation water to agricultural and rural landscapes, and also for the conveyance of City stormwater; and

WHEREAS, unobstructed canals and waterways are critical to controlling flooding of private and public property within the City, and, in some cases, are integral parts of the City's stormwater infrastructure; and

WHEREAS, open canals and waterways provide critical wildlife habitat and corridors, opportunities for connectivity and recreation, and are an integral part of the rural landscape; and

WHEREAS, increased development pressure is impeding canal and waterway owners' ability to maintain the infrastructure such that it can function for its intended purposes of flood control and irrigation delivery; and

WHEREAS, Nibley City has certain contractual obligations with respect to the Nibley Blacksmith Fork Irrigation Company (NBFI); and

WHEREAS, Nibley City has the authority to establish policies to control the impact of development on commonly held assets and resources within the City.

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

1. The attached ordinance, titled "An Ordinance Preserving the Safety and Allowing for Maintenance of Canals and Waterways" is hereby 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 \_\_\_\_\_, 2016.

\_\_\_\_\_  
Shaun Dustin, Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

**ORDINANCE 16-\_\_\_\_**  
**AN ORDINANCE PRESERVING THE**  
**SAFETY AND ALLOWING FOR MAINTENANCE OF CANALS AND WATERWAYS**

1. Waterways as used in this Ordinance includes surface water runoff and drainage, drainage ditches and irrigation ditches, whether surface or subsurface, and includes open canals as well as canals that are piped.

2. Irrigation and canal companies shall have the right of access to canals and waterways as allowed by state law, and as permitted by the easements and rights of way of such companies.

3. Nibley City will not issue building, fence, grading or other permits that would limit, hinder, infringe or encroach upon any established rights of way, whether established by deed, use, or otherwise, for access to or maintenance of the canals and waterways within the City. Absent clear and convincing evidence otherwise, the City presumes that all canals and waterways have an access easement and setback fifteen feet (15') on one (1) side and five feet (5') on the opposite side, in width from the top of each inside bank or the toe of the Canal, whichever is greater, to the edge of the easement. The City shall designate in consultation with any Canal Company, if needed, with respect to which side has the fifteen foot (15') or five foot (5') easement. To protect this easement, there is a fifteen foot (15') or five foot (5'), whichever the case maybe, setback requirement prohibiting any fences, structures or permanent improvements within fifteen feet (15') or five feet (5'), whichever the case maybe, of the bank of any canal or waterway. The City will not require permits for existing fences, structures or permanent improvements within the fifteen foot (15') or five foot (5'), whichever the case maybe, setback if such were legal under Nibley City Ordinances when installed. Areas where canals are piped shall have a ten foot (10') easement and setback from both sides of the centerline of any portion that has been piped, subject to the same restrictions and conditions in the easement areas as provided in this paragraph.

4. For changes in land use, including but not limited to building permits, new subdivisions, rezones, annexations, and development:

a. Nibley City may condition approval upon the formal recording of any reasonable canal and/or waterway easements, for access, maintenance, and public safety.

b. Canal and waterway easements will not count against zoning density requirements for open canals and waterways.

c. Easements for canals and waterways and for access to the same within any new subdivision shall be required for approval of any proposed subdivision.

d. Easements for canals and waterways and for access to the same may be required by Nibley City across property that adjoins the subdivision when necessary to

properly serve the subdivision or protect the City and may be a condition for approval of any proposed subdivision.

e. Developers who choose to establish deeded public rights-of-way along canals and waterways shall be entitled to an increased (10%) density bonus, as outlined in the Nibley City Subdivision Ordinance.

f. The City may require Preliminary Plats to be submitted to canal or irrigation companies, who may be impacted by the subdivision, for review, comment and/or approval.

5. The City adopts the following conditions and requirements with respect to any land use change, development, or improvement that may impact the NBF Canal ("Canal") and which, at the discretion of the City Manager, in consultation with the Mayor, may be applied to and required for other canals and water ways within the City prior to any land use change, development or improvement:

a. Authorization for New Storm Water Inlet Structures and Outlet Structures. No new or additional Storm Water Inlet Structures and Outlet Structures and no increases in the flow of such inlets or outlets beyond the Current Discharge as defined by an Agreement between the City and NBF, shall be created or maintained except in conformance with the following procedure.

(1) The City, a landowner or a developer may at any time contact NBF to evaluate the potential for new Inlet Structures and Outlet Structures, or the potential for an increase in the capacity of any existing Inlet Structure or Outlet Structure.

(2) The City, a landowner or a developer shall provide a written request to NBF for each additional Storm Water Inlet Structure or Outlet Structure, and for increases in flow beyond the Current Discharge or any previously approved increase for existing Inlet Structures or Outlet Structures. The request shall be accompanied by the following:

(i) Drawings in both digital and printed copy showing the location, size and design specifications of each Inlet Structure or Outlet Structure proposed to be added or increased.

(ii) Drawings showing the drainage area to be served by the Inlet Structure.

(iii) Expected occurrences that will cause Storm Water inflow into the Canal, including an estimate of the time of year during which maximum inflows are expected, subject to subsection (iv) below.

(iv) An estimate of the maximum inflow to be expected from the area to be served by the Inlet Structure (with the understanding that the maximum

flow may not exceed the flow allowed by Current Design Standards). This rate is determined by completing a hydrologic analysis based on soil types to determine the runoff rates prior to any land use change, development or improvement for sites greater than 1 acre, or by assuming a historical runoff rate of 0.1 cfs per acre for sites smaller than 1 acre.

(v) Written disclosure of whether the Storm Water discharge to the Canal is expected to contain any Pollutant regulated under the Utah Clean Water Act and implementing regulations thereof.

(vi) Certification that the City, landowner or developer have complied and will comply with all applicable requirements of the Utah Water Quality Act and associated regulations.

(vii) Any additional documentation or information reasonably requested by NBFI.

b. Any objections of any kind by NBFI to a new proposed Inlet Structure, Outlet Structure, or the enlargement of either, shall be given by written notice within sixty (60) days after receipt by NBFI of the written request for the same from the City, landowner or developer. NBFI shall have the right to refuse such approval only if, as demonstrated by empirical data:

(1) in the case of a new Inlet Structure or enlargement of an existing Inlet Structure, water inflow into the Canal from such inlet will exceed the Current Discharge into the Canal from the drainage area to be served by such inlet;

(2) the inflows are found by a City-County Health Department or other State, County or federal agency to be physically harmful to animals, crops of any kind, or any other beneficial use of the water; or

(3) the proposed Inlet Structure or Outlet Structure will diminish the ability to utilize all of the water to which NBFI is entitled under its water rights, hinder water deliveries, or alter, damage or obstruct, diversion structures, measuring devices, or regulating headgates on the Canal.

c. If NBFI does not provide written objections within sixty (60) days after receipt of the City's, landowner's, or developer's written request, NBFI shall be deemed to have approved the additional Inlet Structure, Outlet Structure, or increase in capacity of either.

d. If the request for additional Inlet Structures, Outlet Structures or increase in capacity of an inlet or outlet is not agreed to, NBFI shall work with the City, landowner or developer in an attempt to reach an equitable resolution in order to provide for the same.

e. If the additional Inlet Structure, Outlet Structure or increase in flow is formally approved or deemed approved as provided herein, the City shall allow commencement

of construction or modification only after a written Agreement has been agreed-to, signed by the City, landowner or developer and NBFi.

f. The City shall require, as a condition to any land use change, development or improvement approval, that infrastructure (such as fencing or other improvements) be installed by a landowner or developer as part of a land development project, when reasonably determined by the City to be necessary.

g. Landowners or developers of any land within the City must include with their plans and specifications a storm water detention plan that provides for all storm water to be retained at the site of such any land use change, development, or improvement except as may be otherwise approved by the City and NBFi.

h. If any landowner or developer of any land proposes any piping of the Canal, the construction of bridges or retaining walls, the installation of culverts, or any other action which may in any way affect the Canal, the City shall require that the plans and specifications be delivered to NBFi, and that NBFi consent to the same, in writing, prior to the approval of such land development by the City, which consent or the basis for denying such consent shall be given by NBFi within sixty (60) days after NBFi receipt of the request for approval.

i. Trash Racks. The City shall require landowners or developers to install, in connection with City-approved land use changes, development plans, or improvements, trash racks and inlet grates on all Inlet Structures so as to prevent clogging of the headgates, screens and pipelines situated within the Canal.

6. Alteration of canals or waterways, including grading, modification, contouring or removal of vegetation or soil of banks to canals and waterways, shall only be done by the canal or irrigation company, or pursuant a written permit issued by the canal or irrigation company.

7. Vested rights in the established canals and waterways for both conveyance of water and for access and maintenance of the canal or other waterway shall be protected against all encroachments and no improvements shall be erected that interfere with the same and the City shall issue no permits for improvements that interfere with the same.

8. A civil action for damages and other relief under this ordinance may be brought by the City or any person injured by another's actions in violation of this ordinance. Such civil action may be brought independent of any criminal action.

9. It is unlawful for any person to place any pole, board or other obstruction whatsoever, or any trash, yard waste or other waste material, other than irrigation water, in any ditch, waterway, or canal for any purpose, or in any manner to interfere with the free and unobstructed flow of water in such ditch, waterway, or canal. Violation of this provision constitutes a Class B misdemeanor under this Code.

10. It shall be unlawful to willfully or maliciously alter, break, or injure any dam, canal, headgate, water ditch, or other means of diverting or conveying water for irrigation or other useful purpose, or to dig away the bank or banks of any ditch, canal, or reservoir within the Nibley City boundaries. Violation of this provision constitutes a Class B misdemeanor under this Ordinance.

11. Whenever any irrigation or canal company has a right-of-way for any canal or other waterway, it shall be unlawful for any person to place or maintain in place any obstruction, or change of the water flow by fence or otherwise, along or across or in such canal or waterway, without first receiving written permission for the change from the irrigation or canal company. Violation of this provision constitutes a Class B misdemeanor under this Ordinance.

12. Any person who in any way unlawfully interferes with, injures, destroys, or removes any dam, head gate, weir, casing, valve, cap, or other appliance for the diversion, apportionment, measurement, or regulation of water, or who interferes with any person authorized to apportion water while in the discharge of his or her duties, is guilty of a class B misdemeanor under this Ordinance.

13. It shall be unlawful for any person to place or cause to be placed in the easement, channel, bed or bank of any river, stream, wash or other natural drain or within or upon any storm drain, flood control channel, reservoir, detention basin, debris basin, or other property over which the City, canal or irrigation company has an interest, matter of any kind that may operate to impede, retard or change the normal direction of the flow of flood, storm or other waters, or that may catch or collect debris carried by such waters, or that may be carried downstream by such waters to the damage and detriment of adjacent private or public property, or that may degrade the quality of the water, without first obtaining a written permit for such placement from the City and canal and/or irrigation company. Violation of this provision constitutes a Class B Misdemeanor under this Ordinance.

14. In the event any person violates any of the provisions of this Ordinance and the City takes action to correct the violation in order to protect the health, safety or welfare of its residents or to protect public or private property, the violator shall pay all reasonable costs and expenses incurred by the City (including but not limited to reasonable charges for use of City equipment and employees plus ten percent (10%) overhead) when invoiced by the City. Failure to pay within thirty (30) days of invoice shall cause the amount due to bear interest at eighteen percent (18%) per annum from the invoice date until paid, plus attorney fees and costs incurred by the City in collecting the same.

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