



Council Memorandum

REPORT TO: Honorable Mayor and City Council

FROM: Chris Kukulski, City Administrator

SUBJECT: Lockwood Water and Sewer District boundary expansion to include the Lockwood Targeted Economic Development District (TEDD)

MEETING DATE: October 9, 2019

RECOMMENDATION: The City Council will attend tomorrow's Lockwood TEDD tour as you consider allowing the Lockwood Water and Sewer District to expand their service boundary. In preparation for the tour, please read this memo and chapter 28 of the City's Rules and Regulations Governing Water and Wastewater Services (attached).

BACKGROUND: During an April 2019 City Council Work Session, the Lockwood Water and Sewer District (LWSD) asked the Council to enter into discussions to expand their sewer district to include the Lockwood Targeted Economic Development District (TEDD).

The TEDD is approx. 1,200 acres located between the Interstate and Yellowstone River – north of Lockwood and east of Billings Heights. Most of the area is zoned industrial or agriculture. The current use is predominately agriculture or open space. Because of flood plain restrictions and other topographical issues, approximately half of the area is considered developable.

The goal of the Lockwood TEDD is to create the planned, ready-to-go industrial space necessary to retain Yellowstone County's growing industrial businesses and attract new private investment and industrial development that will provide many quality, long-term, high-paying jobs. The economic potential of this development is enormous. In 2015, the University of Montana's Bureau of Business and Economic Research conducted an impact analysis of Trailhead Commerce Park, a proposed industrial development in a portion of the area that has since become the Lockwood TEDD. That analysis estimated that such a development would create the following increases after fifteen years:

- Total employment 3,655
- Annual Personal Income \$255.7 million
- Annual Economic Output \$862.0 million
- Population Increase 4,352

Some of the industrial businesses already located in the TEDD include: Town & Country Supply, Pacific Steel & Recycling, American Steel, Montana Peterbilt and Apex Steel.

The contract between the City and the LWSD requires that both sides agree, in order to expand the LWSD boundary.

Attached is Chapter 28 of the Billings Rules and Regulations Governing Water and Wastewater Service, most recently updated in 2017. Chapter 28 clearly states that it is the intention of the City of Billings to not provide water or wastewater service to customers outside the City Limits. The chapter does include a process for the Mayor and City Council to waive the requirement to annex with the following provision. The final paragraph of chapter 28 reads as follows:

In all circumstances where an enlargement of a service area has been approved or conditionally approved but annexation has been denied, prior to the provision of services by the City the applicant shall enter into a service agreement with the City and shall submit a written waiver of right to protest annexation.

Out of hundreds (maybe even thousands) of requests for access to City water and/or wastewater services, Billings has made only a handful of exceptions to these rules, most notably Lockwood, Phillip 66, Exxon and the Meadowlark Mobile Home Park. As it has been explained to me, Billings did an evaluation of the Lockwood area and determined it would be cost prohibited to bring Lockwood's infrastructure up to Billings City standards. This challenge combined with health issues that existed in Lockwood, Billings City Council decided to waive the annexation requirements and provide access to City wastewater treatment through a service agreement. Phillip 66 was receiving City water service before they requested wastewater service. Because they were already receiving water service it was determined that legally we were required to provide them wastewater service. The City Council waived Exxon based on the previous Lockwood decision. The last area that has been waived is the Meadowlark Mobile Home Park next to the City Landfill. MDEQ had permitted the Meadowlark Park to construct an above ground sewage lagoon in the 100 year flood plain a mile above the City's water plant intake. PWD had serious concerns with the vulnerability of the lagoon and its potential health impacts on the City's water treatment plant. In discussions with the Meadowlark owners, they agreed to construct and maintain the sewer line to our sewer transmission line and not construct the lagoon. These are the only areas we are aware of that the Mayor and Council have provided water or sewer service outside the City Limits. Based on my reading of our rules and regulations, any user who is not immediately annexed into the City should be required to sign a waiver of right to protest annexation.

With the exceptions listed above, the common theme is tied to prior developments not new development. In the case of the Lockwood TEDD, it has yet to be developed and can be developed with appropriate infrastructure standards to protect the environment and provide quality municipal services. Our City and County have prioritized the Lockwood Interchange Bypass, costing tax payers approx. \$200 million dollars to connect the Billings Heights to the interstate and Lockwood. This new transportation corridor and the TEDD will fuel development in our community. As stated earlier, the impact analysis of the TEDD estimated that such a development would create 3,655 jobs, with an annual income of over \$255 million. The Trailhead Business Park is a great idea and if developed properly, will be a great asset to our community.

I believe a significant problem for the City, is the exceptions we have made to help former developments, most notably the refineries and Lockwood, when their private utility systems failed. These entities should have been annexed or at a minimum, waivers of right to protest annexation should have been required. These decisions to be helpful are now being used against us. We should not repeat this mistake. Every time we make an exception, it becomes harder and harder for future policy makers to defend the necessity to annex. If the city had stopped requiring greenfield developments to annex as a condition of utility extensions back in the 1970s, the City of Billings would likely have a tax base and population closer to 65,000 residents but we would bear the cost of services for today's population of 110,000.

As we understand it, the LWSD boundary was originally developed based on Lockwood's water rights. The water district was established first and the sewer district has the same boundaries. During discussions with the TEDD advisory board the LWSD staff have acknowledged that by expanding their service area to include the TEDD boundaries, they may not have enough water rights to meet the needs of their expanded district. This is a problem that should not be ignored. Water rights are expensive and not always even available. The City has sufficient water rights to provide a solution. One of my concerns is that once the city begins providing sewer treatment services and it is determined that it is not cost effective for the LWSD to purchase more water rights, the City will be asked to provide water. In order to minimize our probability of repeating the situation the City found itself in with Phillip 66 we need to require waivers of right to protest annexation for each utility service as required by our rules.

When checking into the competing Industrial Parks identified by Big Sky Economic Development, they are all believed to be within the city limits of their perspective communities. Being within the City is an advantage, not a disadvantage. City services are critical to the success of a modern business park. We are committed to the City's vision as a diverse welcoming community where people prosper and businesses succeed. We can best accomplish this vision when developments become a partner with us rather than a competitor.

ALTERNATIVES: As determined by the Council.

FISCAL EFFECTS: The fiscal effects will continue to be analyzed prior to any formal recommendation to the City Council.

Attachments: Chapter 28 of the Billings Rules and Regulations Governing Water and Wastewater Service

Report compiled on: October 9, 2019