



## OFFICE OF THE CITY ATTORNEY

Courtney Jo Lawellin

### CONTACT

PHONE:  
406-823-6009

WEBSITE:  
[Livingstonmontana.org](http://Livingstonmontana.org)

Address:  
414 E Callender Street  
Livingston, MT 59047

EMAIL:  
[cityattorney@livingstonmontana.org](mailto:cityattorney@livingstonmontana.org)

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MEMO

FROM: Livingston City Attorney's Office, Courtney Lawellin

Re: *Annexation O Street to KPRK (Yellowstone River)*

TO: City of Livingston Commissioners,

The City is seeking to annex the portion of land contiguous to the City, at the east end of Park Street, reflected in the maps, under Title 7, Chapter 2, Sections 43 and 45, of the Montana Code Annotated. The City is not proposing the annexation on basis that the properties are receiving City utilities, even though most of them are receiving some or all city utilities, and City Code requires a waiver of annexation to receive utility service. (See list at pg. 51 of the Commission Packet). The opposition of some of the property owners is included in the commission packet, however an actual protest is not available to the property owners. In addition to the waiver of annexation for the provision of services, the Resolution of Annexation reflects that a basis for the resolution is that the properties are wholly surrounded. The river is not a boundary recognized as a barrier to contiguous or wholly surrounded land for purposes of annexation under Sections 43 or 45. The wholly surrounded Statute reads in relevant part:

**7-2-4502. Protest not available.** *Wholly surrounded land is annexed, if so resolved by the city or town council, whether or not a majority of the real property owners of the area to be annexed object. The question of annexing the wholly surrounded land is not subject to being voted on by the registered voters of the area to be annexed.*

The Montana Supreme Court has stated that, "cities are authorized to annex freehold properties without prior request or petition if the property: 1) is contiguous to, or shares a common border with, city territory; or 2) is wholly surrounded by city territory.<sup>2</sup> Sections 7-2-4301 thru -4331, MCA (annexation of contiguous land); §§ 7-2-4501 thru -4511, MCA (annexation of wholly surrounded land). The contiguous land method differs from the wholly surrounded method in that the contiguous land method allows either the majority of registered voters or the majority of real property owners in the proposed annexation area to vote against<sup>3</sup> or override<sup>4</sup> the annexation, while the wholly surrounded method does not. Sections 7-2-4314 (1)(c), (d), -4502, MCA.

Under the wholly surrounded method of annexation of Title 7, chapter 2, part 45, MCA, "A city may include as part of the city any platted or unplatted tract or parcel of land that is wholly surrounded by the city upon passing a resolution of intent, giving notice, and passing a resolution of annexation." Section 7-2-4501, MCA. Section 7-2-4502, MCA, reiterates the mechanism by which wholly surrounded freehold territory is deemed annexed by a municipality:" *Houston Lakeshore Tract Owners Against Annexation, Inc. v. City of Whitefish*, 2017 MT 62, ¶¶ 11-12, 387 Mont. 83, 87–88, 391 P.3d 86, 89–90

A 40 foot easement was granted to the City for the installation, maintenance, and repair of a sewer line that runs through the properties and which has done so since 1960, now more than 60 years. That agreement did not provide for the right of any property owner to receive city services and did not include an easement for water mains. However, most occupied properties are now served by water and/or sewer services.



The following City Codes require waiver of protest to annexation:

#### **Sec. 13-33. - Water service—application.**

Waiver. **Before customers living outside the City limits may hook up or receive service they must sign a waiver of protest to annexation** and request for Rural Fire District withdrawal which protest waiver will be filed against the user's property. The execution of the waiver application does not guarantee hook-up to any applicant.

#### **Sec. 14-13.2. - Sewer main extensions.**

- A. An application must be submitted to the office of the Public Works Director and approved before a

City sewer trunk line or a City sewer main may be extended. The application for connection shall be submitted by the City Manager to the City Commission with the City Manager's review, recommendations and suggested connection fee.

**A connection to the City's sewer by a person or business whose premises are located outside the City shall require a Waiver of Protest**

**of Annexation** and a request for withdrawal from the Rural Fire District and the City Manager to make a recommendation to the City Commission to approve extension. In addition, any person or business located outside of the City and currently receiving utility services from the City shall be required to consent to annexation in order to receive continued services. Approval, disapproval, or amendment by the City Commission shall constitute final action upon the application.

The opposition to annexation from the property owners in the proposed annexation area are based on their concerns about any changed use upon being annexed, increased taxes, loss of dark sky environment, and a general sense that they would be paying increased taxes for no increased benefit. These properties have been receiving city services, some of them for decades, without paying any City taxes. Small changes to existing Ordinances would allow for nonconforming uses to continue, should the Commission chose to make those changes.

In municipal planning for annexation, the prospective planning for the **future** provision of services is mandated in Montana law. Here the property owners are **currently** benefitting from existing City utilities. This planning is also reflected in the way that the Commission has identified prospective annexations. The applicable law states in relevant part:

The express purpose of providing utility services to areas that will develop is for the "just and equitable system of adding to and increasing [municipal] boundaries" in the state of Montana. §7-2-4702 MCA. The policies of "sound urban development essential to the continued economic development of this state", and any municipal annexation "essential for sound urban development and for the protection of health, safety, and welfare in areas being intensively used for residential, commercial, industrial, institutional, and governmental purposes or in areas undergoing such development, must consider these principles. *Id.* Municipal boundaries should be extended to include such areas and to provide the high quality of

governmental services needed for the public health, safety, and welfare. *Id.*

While there is benefit to the property owners in being City residents, and receiving all City services, a benefit of annexation is to the City. The water lines in the area are undersized and the sewer line is in need of repair or replacement. The residents should be paying equitably for the City's provision of utility services. There is also additional development planned, which has been commenced by the acquisition of land by the Living Hope Church. The prospective division of land and the addition of city utilities to properties near the Yellowstone River is essential to the practical and statutory purpose of annexation.

the reason that State Statute doesn't allow for protest of wholly surrounded annexations is in recognition that the properties are inevitably almost exclusively using City Services, especially roads, and paying no City taxes to use these services, completely passing their share of the costs off to residents of the City. To allow these properties, accessed exclusively by City roads, to remain in the County is inequitable to those individuals within the City that pay City taxes and who essentially subsidize services in unannexed, adjacent, wholly surrounded properties. Through annexation, the City is requiring the properties to pay their fair share, in addition to ensuring that any development in what is a very environmentally sensitive area occurs in a manner consistent with the City's infrastructure, planning, and standards. Standards that do not exist in the County government.

The imposition of the City taxes and assessments will not appear on the property owners tax bills until 2022, based on the timing of this annexation and the cycle of tax assessments. Residents who qualify, often retired or otherwise on fixed incomes, may apply to the State of Montana for exemptions to the payment of property taxes, this includes City taxes. Some of the residents in this annexation may qualify.

The City expects to work with all residents to make necessary improvements and to work to implement City strategies for maintaining neighborhood character, including dark sky views.

Sincere regards,

Courtney Jo Lawellin  
Livingston City Attorney